

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,)
7 v.) Criminal Action
8 TAREK MEHANNA,) No. 09-10017-GAO
9 Defendant.)
10)
11)
12)
13)
14)
15)

16 BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
17 UNITED STATES DISTRICT JUDGE

18 DAY TEN
19 JURY TRIAL

20 John J. Moakley United States Courthouse
21 Courtroom No. 9
22 One Courthouse Way
23 Boston, Massachusetts 02210
24 Monday, November 7, 2011
25 9:07 a.m.

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Cheryl Dahlstrom, RMR, CRR
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Mechanical Steno - Computer-Aided Transcript

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I N D E X

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WITNESSES FOR THE
GOVERNMENT:

ALI ABOUBAKR, resumed

By Mr. Auerhahn

14

By Ms. Bassil

37

ANDRE KHOURY

By Mr. Chakravarty

63

E X H I B I T SGOVERNMENT'SDESCRIPTIONFOR IDIN EVD.

749 Map of area of Yemen

69

751 Map of area of Pakistan

76

750 Map of area of Iraq

77

754 Map of area of Saudi Arabia

79

449- State of the Ummah video
450

81

92 Photocopy of symbol

96

1 (The following proceedings were held in open court
2 before the Honorable George A. O'Toole, Jr., United States
3 District Judge, United States District Court, District of
4 Massachusetts, at the John J. Moakley United States Courthouse,
5 One Courthouse Way, Boston, Massachusetts, on November 7, 2011.

6 The defendant, Tarek Mehanna, is present with counsel.
7 Assistant U.S. Attorneys Aloke Chakravarty and Jeffrey Auerhahn
8 are present, along with Jeffrey D. Groharing, Trial Attorney,
9 U.S. Department of Justice, National Security Division.)

10 THE CLERK: All rise.

11 (The Court enters the courtroom at 9:07 a.m.)

12 THE COURT: Good morning. Mr. Carney, you have a
13 motion?

14 MR. CARNEY: Yes. I was wondering if the Court had a
15 chance to review it?

16 THE COURT: I have.

17 MR. CARNEY: If I may be heard briefly on it?

18 As I see the list of witnesses that the government
19 will be calling this week, and the dozens -- indeed, hundreds
20 of documents that the government intends to further offer in
21 this trial, I must object to this further, quote, state-of-mind
22 evidence. The defendant's state of mind, as I said in my
23 opening statement, was, is, and will be that Muslims have an
24 obligation to defend Muslim countries from invasion by armies
25 or oppression by others. This applies whether the invaders are

1 the Mongols, the Serbs, the Russians, or the Americans. He's
2 been outspoken in his view.

3 I know the Court will be instructing the jury, in
4 part, based on *Holder versus Humanitarian Law Project*. The
5 language in *Holder* of the United States Supreme Court last year
6 was unmistakably clear in stating that an American has a right
7 to vigorously promote -- to promote -- and I'm paraphrasing --
8 to promote and support the goals of a foreign designated
9 terrorist agency. The whole concept of independent advocacy
10 flows from this.

11 What we are seeing in this trial is a parade of
12 instant messages, chats, emails, conversations with the
13 defendant where he is expressing his support for getting -- for
14 defending a Muslim country like Iraq, as well as a Muslim
15 country like Saudi Arabia or a Muslim country like Afghanistan.

16 What the government has to prove in this case, I
17 submit, is that the defendant, in order to violate 2339 in
18 either respect, has to show that he was under the direction,
19 acting at the direction of or directly in coordination with the
20 foreign terrorist organization in regard to one of the
21 statutes, and that he's being basically under their control.
22 And the court uses language that clearly would apply to an
23 employee, to someone who is taking direct orders, who is being
24 told, "You do this and you do that." There has been zero
25 evidence of this. The state-of-mind avalanche of evidence that

1 the government is putting in is prejudicial at this point
2 because the state of mind of the defendant is not at issue in
3 this material support case.

4 The flow of the government's view, I would submit, is
5 that it believes that every person who agrees with
6 Mr. Mehanna's view is part of a worldwide conspiracy, whether
7 that person is in Bosnia, whether that person is in London,
8 whether that person is in Chechnya, whether that person is in
9 South America or another part of this country, a person the
10 defendant has not heard of, has never met, that all of these
11 people are part of a single conspiracy to assist al Qaeda and
12 provide material support at al Qaeda's direction or at their
13 direct coordination.

14 *Dellasantos* made clear that when the government
15 alleges a particular conspiracy in an indictment, the evidence
16 must hold true to that allegation and not expand beyond all
17 recognizable boundaries. That's what the government is doing
18 here. That's why they can name as coconspirators, in their
19 view, people that Mr. Mehanna never had any contact with, never
20 spoke to, never had any emails with and say, "Osama bin Laden,
21 he was a coconspirator with Mr. Mehanna."

22 The prejudice to the jury is overwhelming. Today the
23 government intends to offer a number of conversations between
24 Tarek and a friend that touch occasionally on Islam,
25 occasionally on the obligation to defend a Muslim country,

1 occasionally on, "Do you think you can set me up with a woman
2 that I might want to marry?" occasionally on movies,
3 occasionally on things kids his age talk about.

4 There is no relevance to the conspiracy to have this
5 come in. And at some point the jury is going to get the
6 impression that the only thing that really matters here is does
7 he support Muslims defending a Muslim country. Because they
8 will have seen so many days of this trial dedicated to that
9 evidence that it's impossible for them not to think, "Well, the
10 Court would not allow in this evidence if this didn't go to
11 prove this case."

12 I respectfully submit, your Honor, that at this point
13 this type of evidence should stop. If they have evidence that
14 Mr. Mehanna was acting under the direction or in direct
15 coordination with al Qa'ida, bring it on. But if we're just
16 going to have a parade of witnesses who will say: This is a
17 video showing warfare in Bosnia that was possessed by
18 Mr. Mehanna or seen by Mr. Mehanna or shared by Mr. Mehanna
19 with others; or this is a book he had; or this is something
20 that's a document that he had in his possession; or this is
21 what people said to Mr. Mehanna whom he was speaking to in
22 person or on the internet in a web forum; or this, again, is
23 what Mr. Mehanna believes, at some point I submit, your Honor,
24 the prejudice will so outweigh the minimal probative value that
25 the defendant will be denied a fair trial. And I respectfully

1 submit we are at that point today.

2 THE COURT: Mr. Chakravarty?

3 MR. CHAKRAVARTY: Your Honor, as you know, just in
4 terms of logistics, we received notice last night of the filing
5 of this motion. We would ask for until the end of the business
6 day to file something in response specifically regarding the
7 legal issues of cumulativeness and where the Court
8 should -- how the Court should review whether an item of
9 evidence is cumulative and the unfair prejudice substantially
10 outweighs the probative value.

11 But just in short rejoinder, your Honor, the state of
12 mind of the defendant is squarely at issue in this case. The
13 defense has placed it at issue in this case. The elements of
14 the offenses have placed it before the jury to determine what
15 the defendant was thinking when he intentionally -- allegedly
16 intentionally provided and conspired to provide material
17 support to a designated terrorist organization and to those
18 engaged in acts of terror. And then, with regards to the
19 connectedness component with regards to the *Holder* finding, to
20 be able to demonstrate that the motivation, the purpose for his
21 actions, was to provide support to that organization or to
22 others engaged in that.

23 So the fact that there is an overwhelming volume of
24 that type of evidence that the defendant himself generated,
25 collected, disseminated, is squarely at issue in this case.

1 It's unfortunate for the defense that there is so much of this
2 evidence. And it's not the typical case where you have this
3 much of evidence in so many different forums, but just because
4 we have it where each conversation is different, each video is
5 different, each image with some small exceptions are different,
6 these are not cumulative; they, rather, demonstrate to the jury
7 the fact that this defendant is not like the overwhelming
8 majority of Muslims around the world who do not obsess with
9 this notion of engaging in physical and violent jihad against
10 Americans in particular. That's what this case is about and
11 the government should have the ability to present that evidence
12 to the jury.

13 THE COURT: All right. It may well be, as Mr. Carney
14 says, that at some point the evidence becomes so cumulative
15 that unfair prejudice outweighs probative value, but we're not
16 at that point. We're very early in the evidence. And a
17 cumulative argument is just not a convincing one at this point.
18 So the motion is denied.

19 Anything else before we get the jury?

20 We're going to resume, I guess, with redirect of
21 Mr. Aboubakr?

22 MR. AUERHAHN: Yes, your Honor.

23 MR. CHAKRAVARTY: We are.

24 Your Honor, just one other housekeeping matter. And
25 Mr. Carney's motion kind of brings it to mind. I've noticed

1 that Mr. Lyness was kind enough to generate a list of the
2 exhibits as of Friday -- or Mr. Gross -- somebody in the
3 clerk's office was. Mr. Lyness, I'm sorry.

4 And my understanding with regards to the different
5 bulk evidence that has been admitted is that they've been
6 admitted as 401 relevant and then pending a motion to strike,
7 essentially.

8 THE COURT: Do you have the list, Paul?

9 Yeah, go ahead.

10 MR. CHAKRAVARTY: And that's reflected on the list
11 with regards to the communications that Mr. Hughes -- or that
12 Agent Hughes had authenticated but those exhibits, primarily
13 from the computer which were introduced through Mr. Scripture,
14 are not so reflected. And it's possible because the Court
15 hadn't issued its ruling before then. And I guess the
16 government's wondering whether they should be in the same vein
17 or not.

18 THE COURT: I think they are on the same rule of
19 proceeding; that is, before any is shown to the jury, we can
20 address it specifically. At some point they will all have to
21 be addressed, I guess, or those to which there is an objection
22 will have to be addressed. There are a number of them.

23 These are mostly photographs, I think?

24 MR. CHAKRAVARTY: And videos, your Honor.

25 THE COURT: Yeah, a very large bulk of them. So I'll

1 have to go through them. I hadn't yet done that. I thought we
2 still had time to do it. So you're right, the list should
3 reflect that, and we're catching up a little bit on that.

4 So I guess as a way of proceeding, how about if the
5 government tells the defense and the Court what you think is in
6 under your offer.

7 MR. CARNEY: I'm sorry. Could you say that again,
8 your Honor, please?

9 THE COURT: This goes back to the first or second day
10 of trial, right? What exhibits were offered by the government?
11 We later crystalized the rule of procedure after that, I think;
12 that's why they didn't get formally entered. We can just do
13 the accounting and check to see whether that's a complete or
14 accurate list both from the defense point of view and from our
15 point of view from our own notes. If it is, then we'll put
16 those in under the same provisions, subject to strike. If it
17 isn't, we'll try to figure out what the discrepancy is and how
18 to solve it.

19 MR. CHAKRAVARTY: So for purposes of today, there are
20 a few which we've given notice of to the defense and to the
21 Court that we would be referencing to the extent that --

22 THE COURT: Okay. I have not had a chance -- I saw
23 the email this morning, I guess, of the new lineup, but I
24 haven't had a chance to look at the exhibits that are
25 referenced there, so we'll have to see how --

1 MR. CARNEY: May I ask a point of clarification, your
2 Honor? I understand that the government will be calling a
3 witness to read these exhibits or show these exhibits, and we
4 will have objections to those. So if that's the proposed
5 procedure, which I understand it is for the government, are
6 they going to be offering a particular exhibit and then we get
7 to interpose our objection and the grounds for it before it is
8 either read to the jury or played for the jury as a video?

9 THE COURT: Yes. A 403 objection?

10 MR. CARNEY: Yes, your Honor.

11 THE COURT: I think any others would be. That's my
12 understanding.

13 Now, let me look at the lineup here. After
14 Mr. Aboubakr is finished there's an Andrew Khoury?

15 MR. CHAKRAVARTY: He's an FBI agent who will be
16 reading and playing some videos.

17 THE COURT: Okay. And all it says here is "videos."
18 It doesn't identify particular numbers.

19 MR. CHAKRAVARTY: I'm sorry, your Honor. 449, 450,
20 41, 33, and 58.

21 THE CLERK: Mr. Chakravarty, could you repeat those?
22 I'm sorry.

23 MR. CHAKRAVARTY: Certainly. 449 and 450 -- there's
24 two parts of the same video -- 41, 33 and 58.

25 THE CLERK: Okay.

1 THE COURT: Looking at 33, there are 33A, -B, -C and
2 -D.

3 MR. CHAKRAVARTY: Those are various clips of one
4 video. Before playing that video, your Honor, the government
5 did intend to approach because one of the clips contains a
6 depiction of planes going into the World Trade Center on
7 September 11th. Given the context, we don't feel it is
8 unfairly prejudicial, but just to alert the Court and counsel
9 that --

10 THE COURT: What's the running time of all the videos?

11 MR. CHAKRAVARTY: All of them total? I don't have it
12 right in front of me, but less than ten minutes. Probably
13 closer to five, your Honor.

14 THE COURT: Total of all?

15 MR. CHAKRAVARTY: Yes. That's what we pared them down
16 into.

17 THE COURT: I think what we should do, then, is finish
18 with Mr. Aboubakr, and then we could take a break and I'll look
19 at the videos, and then we can entertain any objection to them.
20 Now, that's videos.

21 So you said there are also chats or IMs or something?

22 MR. CHAKRAVARTY: Yes, there are chats that go along
23 with each of the videos.

24 THE COURT: That go with the videos? Okay. Okay.

25 Are those within the group of what you think was

1 all --

2 MR. CHAKRAVARTY: Yes, all save 449 and 450, which
3 would be introduced for the first time today.

4 THE COURT: So 41, 33 and 58 are part of the previous
5 marking --

6 MR. CHAKRAVARTY: Correct.

7 THE COURT: -- we haven't added to the list yet?

8 MR. CHAKRAVARTY: That's correct.

9 THE COURT: All right.

10 Okay. So in short, we'll break after the completion
11 of Mr. Aboubakr.

12 All right. Let's get the jury.

13 THE CLERK: All rise for the jury.

14 (The jury enters the courtroom at 9:32 a.m.)

15 THE CLERK: Please be seated.

16 THE COURT: Good morning, jurors.

17 THE JURORS: Good morning.

18 THE COURT: We appreciate your patience. The lawyers
19 and I had a couple of things to talk about. We are ready to
20 resume with the witness.

21 MR. AUERHAHN: Thank you, your Honor.

22 ALI ABOUBAKR, resumed

23 REDIRECT EXAMINATION

24 BY MR. AUERHAHN:

25 Q. Good morning, sir.

1 A. Good morning.

2 Q. Now, you were asked a lot of questions on cross about what
3 you said and didn't say in the grand jury. Do you recall that?

4 A. Yes.

5 Q. Do you recall when you testified in the grand jury?

6 A. October 2009, I believe.

7 Q. Okay. And before you testified -- and you also testified
8 both on direct and cross about having spent some time with
9 government counsel to prepare for your testimony here today and
10 last Thursday. Is that correct?

11 A. Yes.

12 Q. Before you testified in the grand jury, was there any
13 preparation at all?

14 A. No.

15 Q. Were you interviewed or questioned at all before you went
16 in the grand jury?

17 A. No.

18 Q. Did you have an opportunity to review any of the chats or
19 emails or telephone calls that we used on Thursday before you
20 testified in the grand jury?

21 A. Just what was available publicly through the affidavit.

22 Q. Okay. But the various chats that you talked about on
23 Thursday, you hadn't seen those before?

24 A. No.

25 Q. The telephone call that we played, you hadn't heard that

1 before?

2 A. No.

3 Q. And, sir, you've been -- I believe you testified on direct
4 and cross that you were close friends with Mr. Mehanna since
5 you were in middle school?

6 A. I became acquainted with him -- or reacquainted with him
7 late middle school.

8 Q. Late middle school?

9 And I believe you testified that you were a freshman in
10 high school in September 2001, correct?

11 A. Yes.

12 Q. So approximately how long before that did you become
13 reacquainted with him, in your words?

14 A. A year to two years, roughly, I believe.

15 Q. So either around '99?

16 A. '99-2000, yeah.

17 Q. So when you testified in the grand jury in late 2009, you
18 were testifying about events that covered almost a decade?

19 A. Yes.

20 Q. And went in cold?

21 A. I'm sorry?

22 Q. And went in cold?

23 MS. BASSIL: Objection. This is all leading, your
24 Honor.

25 THE COURT: Sustained.

1 BY MR. AUERHAHN:

2 Q. Now, were you asked things in the grand jury -- excuse me.

3 Were you asked things on Thursday and Friday that you were
4 not asked in the grand jury?

5 A. I can't be certain. I don't remember exactly.

6 Q. Okay. Defense counsel asked you about the first time you
7 said that you gave -- excuse me -- that the defendant gave you
8 the "9/11 Tribute" CD. Were you asked about that in the grand
9 jury as to who gave you that video?

10 A. I believe so.

11 Q. Okay. Let me show you --

12 MR. AUERHAHN: May I approach, your Honor?

13 THE COURT: You may.

14 MS. BASSIL: Well, I believe we have the electronic
15 means to use this, your Honor.

16 And could I have the page number, please?

17 MR. AUERHAHN: Yes. 38 and 39.

18 BY MR. AUERHAHN:

19 Q. Sir, were you asked in the grand jury about the "9/11
20 Tribute" video?

21 A. Yes, I was.

22 Q. Were you asked who gave it to you?

23 A. I can't tell conclusively from the transcript here.

24 Q. Okay. When --

25 MR. AUERHAHN: Can we bring up Exhibit 628, please?

1 Page 4, please.

2 Q. Okay. Sir, do you recall this chat? You were asked about
3 it on direct and cross.

4 A. Yes.

5 Q. Okay. You were talking about the 9/11 hijackers?

6 A. Yes.

7 Q. Where Mr. Mehanna says, "Remember that thing I gave you
8 when I came to visit?" and you say, "Yeah, it says on that???"
9 What's the "on that" that you're referring to?

10 A. The tribute video.

11 Q. That Mr. Mehanna gave you?

12 A. Yes.

13 Q. Now, sir, counsel asked you about your testimony that some
14 of the things that you said in the chats were not true but were
15 intended to enhance your relationship with Mr. Mehanna.

16 MS. BASSIL: Objection. I don't believe he said that,
17 your Honor.

18 THE COURT: Well, just ask a question.

19 BY MR. AUERHAHN:

20 Q. Were you asked about that in the grand jury, whether or
21 not some of the statements you made in the chats were untrue?

22 MS. BASSIL: Objection, your Honor. He never
23 testified the chats were untrue.

24 THE COURT: You may have the question.

25 BY MR. AUERHAHN:

1 Q. Were you asked in the grand jury as to whether or not some
2 of the statements that you made to Mr. Mehanna that are
3 recorded on the chats were not true?

4 A. I don't recall that as a question.

5 Q. Okay. Were you shown any chats in the grand jury?

6 A. No.

7 Q. Now, you were asked whether or not you testified in the
8 grand jury about beheading videos. Do you remember that?

9 A. Yes.

10 Q. Do you recall specifically whether you were asked about
11 beheading videos in the grand jury?

12 A. I can't recall.

13 Q. Okay. Can you look at the same pages I just gave you
14 where you're testifying about the videos? Is there a specific
15 question about beheading videos?

16 A. I don't see it here.

17 Q. So did you provide information in preparation and in
18 testimony about which you were not asked in the grand jury?

19 A. Yes.

20 MR. AUERHAHN: If you could bring up Exhibit 633.

21 Q. Now, sir, do you remember this particular chat where you
22 were talking about a particular nashid that was your favorite?

23 A. Yes.

24 Q. Now, do you recall who gave you that, the CD, or gave you
25 that nashid?

1 A. Ahmed.

2 Q. Ahmed who?

3 A. Ahmed Abousamra.

4 Q. And do you recall what Mr. Mehanna said his feelings are
5 about that particular nashid?

6 A. He called it a classic.

7 Q. Okay. And this is the one that is "Oh, mother, oh,
8 mother, give me my machine gun"?

9 A. Yes.

10 MS. BASSIL: Your Honor, I believe this was all gone
11 into in direct.

12 MR. AUERHAHN: She covered it in cross.

13 THE COURT: Well, it was touched on. Go ahead. You
14 may have it.

15 MR. AUERHAHN: Thank you.

16 BY MR. AUERHAHN:

17 Q. And what else did he say besides "It's a classic"? Did he
18 say, "I love that one too"?

19 A. Yes.

20 Q. Okay. Now, do you recall being asked about the poem that
21 you read, "Make Death what you Seek"?

22 A. Yes.

23 MR. AUERHAHN: Could you pull up Exhibit 441, please?

24 Q. And counsel asked you whether or not someone who drowns
25 might also under certain circumstances be considered a martyr?

1 A. Yes.

2 Q. Is the first line of this, "The bullets hit your heart
3 like the sting of a bee," is this about someone who drowns?

4 A. No.

5 Q. Now, defense counsel asked you a lot of questions about
6 the Qur'an and the Sunnah and the Hadith and the Companions.
7 Are you an Islamic scholar?

8 A. No.

9 Q. And in terms of Islamic jurisprudence, history,
10 traditions, writings, how would you compare your level of
11 knowledge to Mr. Abousamra's?

12 A. Far inferior.

13 Q. And how about to Mr. Mehanna's?

14 A. Far inferior.

15 Q. And counsel asked you about whether or not the study of
16 these could be a lifelong study. Do you remember that?

17 A. Yes.

18 Q. And that the rules include marriage, divorce, and when
19 it's legitimate, to fight. Do you recall those questions?

20 A. I do.

21 Q. Now, was the study of, for example, these rules -- was it
22 purely a study of history and the study of historical writings
23 and important people in the history of Islam or was it for the
24 purpose of applying this to your current life?

25 MS. BASSIL: Objection.

1 THE COURT: You may answer that.

2 THE WITNESS: The purpose of applying it.

3 BY MR. AUERHAHN:

4 Q. To your current life?

5 A. Yes.

6 Q. And did you feel you were receiving instructions from
7 Mr. Mehanna on these issues?

8 MS. BASSIL: Objection to the leading nature of the
9 redirect.

10 THE COURT: Rephrase it.

11 BY MR. AUERHAHN:

12 Q. And in terms of your discussions with Mr. Mehanna, did you
13 learn things that you did not know?

14 A. Yes.

15 Q. Now, when 9/11 happened, you were about how old?

16 A. Fifteen.

17 Q. And Mr. Mehanna was?

18 A. Nineteen, I believe.

19 Q. Did you look up to him?

20 A. Yes.

21 Q. Did you look to him for guidance?

22 MS. BASSIL: Objection. Leading nature.

23 THE COURT: Overruled.

24 You may answer it.

25 THE WITNESS: Yes.

1 BY MR. AUERHAHN:

2 Q. Now, is it fair to say that there are a lot of obligations
3 placed on a Muslim man?

4 A. Yes.

5 Q. Now, among the obligations that Ms. -- that defense
6 counsel asked you about concern jihad, correct?

7 A. I don't recall exactly.

8 Q. Okay. Did she mention -- do you recall her mentioning
9 that jihad is in the Qur'an and in the Hadith?

10 A. Yes.

11 Q. And the concept of protecting Muslims?

12 A. Yes.

13 Q. Now, did you -- did your discussions with Mr. Mehanna
14 include how you should view current conflicts around the world
15 involving Muslims?

16 A. Yes.

17 Q. And did it include discussions about obligations to fight
18 jihad?

19 A. Yes.

20 Q. Now, what did Mr. Mehanna say not in terms of historical
21 jihad involving Mohammad and his companions but with reference
22 to current conflicts?

23 A. It's tough to recall specific conversations, but I know
24 one of the views expressed was that he was extremely angry over
25 the presence of American troops in Saudi Arabia, for example.

1 I'm sorry, can you ask the question again?

2 MR. AUERHAHN: Can the question be read back to him,
3 if possible?

4 (The reporter reads the pending question.)

5 (Pause.)

6 THE WITNESS: I can't recall a specific.

7 BY MR. AUERHAHN:

8 Q. You started saying about anger over U.S. troops in
9 Saudi Arabia?

10 A. Yes. That was...

11 Q. What did he say about that?

12 A. That it was the presence of American troops on -- in that
13 land is -- it's an unfathomable phenomenon -- and I'm
14 paraphrasing -- but that the presence of American troops there
15 should not -- I mean, they should not exist on those lands.

16 Q. And how did the U.S. troops get to Saudi Arabia?

17 MS. BASSIL: Objection.

18 THE COURT: Sustained.

19 BY MR. AUERHAHN:

20 Q. Now, jihad was -- in cross-examination was talked about in
21 terms of obligation to defend Muslim land from invasion by
22 outsiders, correct?

23 A. Yes.

24 Q. Now, did Mr. Mehanna indicate that the U.S. had invaded
25 Saudi Arabia?

1 A. No.

2 Q. And weren't U.S. troops asked to come to Saudi Arabia by
3 the government of Saudi Arabia?

4 A. Yes.

5 Q. In 1991?

6 A. During the Cold War, I believe.

7 Q. Yet expelling them was an obligation?

8 MS. BASSIL: Objection.

9 THE COURT: Sustained.

10 BY MR. AUERHAHN:

11 Q. Now, sir --

12 MR. AUERHAHN: Can you pull up 623, please? Page 8,
13 please.

14 Q. -- do you recall this chat?

15 There's a reference on the previous page to the "Messages
16 to the World" book?

17 A. Yes.

18 Q. Now, Mr. Mehanna says, "And I have been following him for
19 over six years now." And this conversation took place April
20 2006. So would that be before or after 9/11?

21 A. After.

22 Q. Six years going back -- well, this was after 9/11. But I
23 mean, when you tack back over six years, is that --

24 A. Oh, before.

25 Q. And do you recall when the Soviets left Afghanistan?

1 A. Mid to late '80s, I believe?

2 Q. Okay. And do you recall when the first al Qa'ida attack
3 on the United States or U.S. interests was?

4 MS. BASSIL: Objection.

5 THE COURT: You may answer if you know.

6 THE WITNESS: I'm not 100 percent sure. I would say
7 early '90s, but I'm not 100 percent sure.

8 BY MR. AUERHAHN:

9 Q. 9/11 wasn't the first?

10 A. No.

11 MR. AUERHAHN: Can you pull up Exhibit 635, please.

12 Q. Now, do you recall that this was the one where you were
13 talking about a screen name for yourself?

14 A. Yes.

15 Q. And counsel asked you about wanting to choose Abul-Hassan
16 or Abu-Usama. Do you see that there?

17 A. Yes.

18 Q. "Usama" being --

19 A. Well, it wasn't after -- well, the motivation for that
20 name was obviously after Osama bin Laden, but there's a
21 historical figure as well -- with the name "Usama" as well.

22 Q. And he suggested perhaps "Abu WTC," as in World Trade
23 Center?

24 A. Yes.

25 Q. Now, when counsel asked you about whether or not, when

1 watching videos, anyone said, "We have to get up and do
2 something," do you remember that question?

3 A. Yes.

4 Q. And you answered, "I can't recall if those words were used
5 but," and then counsel interrupted and asked you some questions
6 to the grand jury?

7 A. Yes.

8 Q. What was the "but"?

9 A. It was not explicitly said or worded in that way, but the
10 implication was there.

11 Q. And when you and Mr. Mehanna and Mr. Abousamra spoke about
12 conflict in the Middle East today, was it just a geopolitical
13 discussion or was it grounded in the things that you enumerated
14 earlier, the Qur'an, the Hadith, Islamic jurisprudence?

15 MS. BASSIL: Objection.

16 THE COURT: Overruled.

17 You may answer it.

18 THE WITNESS: I'm not sure I understand the question.

19 BY MR. AUERHAHN:

20 Q. In other words, when you talked about the conflict in the
21 Middle East, was it just a geopolitical discussion in terms of
22 oil and battle between different powers or was it grounded in
23 the Hadith and the Qur'an and Islamic jurisprudence?

24 MS. BASSIL: Objection.

25 THE COURT: You may answer it if you understand it.

1 THE WITNESS: It was grounded in the -- from the
2 Qur'an as well, but it was not -- I would not describe it as a
3 geopolitical issue; I would describe it as a -- attaining a
4 certain religious status.

5 BY MR. AUERHAHN:

6 Q. Okay. So when you spoke of the Hadith and then suddenly
7 start talking about leaders of al Qa'ida, were you changing the
8 subject or was it the same subject?

9 MS. BASSIL: Objection.

10 THE COURT: Overruled.

11 You may answer.

12 THE WITNESS: I don't understand the question.

13 BY MR. AUERHAHN:

14 Q. In other words, you just said that the discussion about
15 current conflicts in the Middle East were grounded in Hadith
16 and Qur'an and jurisprudence?

17 A. Uh-huh.

18 Q. So when you were talking about the Hadiths and
19 jurisprudence and the Qur'an and then about current al Qa'ida
20 leaders, were you changing the subject or was it the same
21 subject?

22 MS. BASSIL: Objection.

23 THE COURT: You may answer it if you understand it.

24 THE WITNESS: It was the same subject as -- I'm not
25 sure what subject you're referring to.

1 MR. AUERHAHN: Maybe it's an awkward question. I'll
2 try one last time.

3 BY MR. AUERHAHN:

4 Q. You said that discussions of conflicts in the Middle East
5 today were grounded in the Hadith and the Qur'an and such?

6 A. The discussions?

7 Q. Right.

8 A. Yes.

9 Q. And so when you were talking about those issues, the
10 Hadith and the Qur'an and then talking about leaders of
11 al Qa'ida, were you changing to a new topic or was it the same
12 topic?

13 A. Same topic.

14 Q. And you've already said that with reference to the Qur'an
15 and the Hadith and such, Mr. Mehanna and Abousamra were more
16 knowledgeable than you?

17 A. Yes.

18 Q. What about on issues of the identity and backgrounds of
19 the leaders of al Qa'ida?

20 A. More knowledgeable.

21 Q. Now, you testified on cross that Abousamra was more
22 severe; in fact, brought a level of insanity to his
23 personality?

24 A. Yes.

25 Q. Was there a level of insanity to his views or just his

1 personality?

2 A. Both.

3 Q. Okay. And what of his views would you describe brought a
4 level of insanity?

5 A. The way -- I mean, the way he discussed this topic, it
6 almost seemed as if there was no -- it was as if there were no
7 limits in the things that he said or the views that he could
8 have.

9 Q. And you also said he talked a great deal about fighting
10 jihad. When you said that, did you mean jihad in the time of
11 Mohammad or jihad today?

12 A. Who are you referring to?

13 Q. Abousamra again.

14 A. No, today.

15 Q. Now, would that be one on one with you or in discussions
16 with the other members of the crew, Mehanna and Spaulding and
17 Masood?

18 A. Both.

19 Q. Now, when Mr. Abousamra made these statements in
20 gatherings where Mr. Mehanna was also present, did he ever get
21 up and say --

22 MS. BASSIL: Oh, objection, your Honor. I'm not sure
23 he said that. It assumes facts not in evidence.

24 THE COURT: No, I think he did.

25 Go ahead.

1 I think the predicate was just laid.

2 BY MR. AUERHAHN:

3 Q. So in those discussions when Mr. Mehanna was present where
4 Abousamra was making those statements about jihad today --

5 MS. BASSIL: Objection. It's a compound question.

6 THE COURT: Overruled.

7 BY MR. AUERHAHN:

8 Q. -- did Mehanna ever get up and say, "No, Ahmed, you're
9 wrong"?

10 A. No; not that I recall.

11 Q. Do you recall when you said -- you were asked about the
12 chat where you said, "I miss the Ahmed from a few years ago"?

13 A. Yes.

14 Q. Do you remember that one?

15 Do you remember what Mr. Mehanna said?

16 A. He said something like he was still a good brother and
17 that everyone in the group had their strengths.

18 Q. Did you ever hear Mr. Mehanna disagree with Mr. Abousamra
19 on his views of the obligations of Muslims to fight the United
20 States in Iraq?

21 A. I don't recall, but at the same time those sort of,
22 quote/unquote, scholarly discussions didn't really -- I don't
23 really recall them having those discussions in front of me. I
24 was sort of -- I heard sort of the secondary stuff.

25 Q. What do you mean by "the secondary stuff"?

1 A. Just like the religious -- sort of the stuff in the nature
2 of the things that we would talk about in these chats as well.
3 But, like, actual discussions like that where I felt that they
4 were sort of more scholarly, I don't remember -- in sort of
5 like a debate forum, is what I'm talking about. I don't
6 remember that occurring.

7 Q. Now, Ms. -- defense counsel asked you about -- in the same
8 conversation where you were talking about Ahmed, you were
9 talking about giving a sermon and Mr. Mehanna was suggesting
10 various Hadiths. Do you recall that chat?

11 A. Yes.

12 Q. Do you recall who brought up Osama bin Laden during that
13 discussion?

14 A. No.

15 Q. Okay.

16 MR. AUERHAHN: 623, please. And if you could just,
17 Mr. Bruemmer, scroll through the pages so Mr. -- the witness
18 can see what we're talking about. Just -- okay.

19 Q. So the bottom here, there's a quote from the Messenger of
20 Allah. Do you see that?

21 A. Yes.

22 Q. Okay. On the next page the quote continues?

23 MR. AUERHAHN: You don't have to increase that.
24 That's all right. Okay.

25 The next page, please? Next page?

1 Q. And this is where you talk about, "I miss the Ahmed of a
2 few years ago." Do you see that?

3 A. Yes.

4 MR. AUERHAHN: Okay. Next page, please? And then
5 next page, please.

6 Q. So does this refresh your recollection as to who brought
7 up Osama bin Laden after you were talking about these Hadiths?

8 A. Tarek.

9 Q. And similarly, do you recall counsel asking you about the
10 video showing some explosion around some Marines?

11 A. Yes.

12 Q. And do you remember what you were talking about before he
13 sent you that link?

14 A. No.

15 MR. AUERHAHN: Can we pull up 624, please? And,
16 again, could you just scroll through the pages?

17 Q. There's a long quote at the bottom of that page onto the
18 top of the next page.

19 MR. AUERHAHN: Next page, please. Okay. Next page,
20 please. Next page. Till we get to the ones that aren't
21 redacted. And next page.

22 Q. So you were talking about Hadiths, and then Mr. Mehanna
23 sent you a link. And do you see that there?

24 A. Yes.

25 Q. And says, "Check this out."

1 MR. AUERHAHN: Go on to the next page, please.

2 Q. And this is where you're talking about the explosion,
3 correct?

4 A. Yes.

5 Q. Down here at the bottom, "A group of Marines seeing a
6 weird object on the ground"?

7 A. Yes.

8 Q. So does this refresh your recollection as to what you were
9 talking about before he sent you this link?

10 A. Yes.

11 Q. What was it?

12 A. What was going to be playing in the link.

13 Q. And before that?

14 A. How to download it.

15 Q. And then before that the Hadiths, correct?

16 A. Correct.

17 MR. AUERHAHN: And if we can back up a couple of pages
18 on this one.

19 Q. Now, do you remember counsel asking you about the quote:
20 "You're left with looking to examples of the past because the
21 present is devoid of them" -- do you remember her asking you
22 about that?

23 A. Yes.

24 Q. But left out the next sentence: -- "at least on a local
25 level"? Do you see that?

1 A. Yes.

2 Q. Now, who were the people Mr. Mehanna told you he looked up
3 to like the examples of the past who were not on the local
4 level?

5 MS. BASSIL: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Certainly, Osama bin Laden being one of
8 them.

9 BY MR. AUERHAHN:

10 Q. Now, you testified that you were embarrassed by some of
11 your beliefs that you held back in 2006?

12 A. Yes.

13 Q. And you were asked, "Is it your testimony that those
14 beliefs were taught to you by Mehanna?" And you said, "There
15 was certainly help along the way." Do you remember that?

16 A. Yes.

17 Q. On what beliefs did you feel there was help from Mehanna
18 of which you are now embarrassed?

19 A. The beliefs that are contained within all of the
20 conversations that we saw.

21 Q. And these chats reflect the fact that you spent a lot of
22 time talking to him?

23 A. Yes.

24 Q. Did you confide in him?

25 A. Yes.

1 Q. Did you feel he confided in you?

2 A. Perhaps.

3 Q. Well, he told you a little bit about his relationship with
4 his father?

5 A. Right.

6 Q. And you testified that his father was concerned about his
7 trip to Yemen and his relationship with Mr. Abousamra?

8 A. Yes.

9 Q. Did he tell you why his father was concerned about these
10 things?

11 A. No, but it was understood.

12 MR. AUERHAHN: And pull Exhibit 617 up, please, page
13 8.

14 Q. Now, defense counsel asked you about -- several questions
15 about this particular chat, and you said that different phrases
16 have different meanings in different contexts?

17 A. Yes.

18 Q. In this context when you said, "Yo, let's go donate blood
19 over the summer," what did that mean?

20 A. Fight.

21 Q. I'm sorry?

22 A. To fight.

23 Q. Now, after Mr. Mehanna says, "So your mom would kill me,"
24 and you say, "Actually, my dad would be more pissed but they
25 don't have to know about it. I want to go, man." He says,

1 "Well, they found out about it so it's not easy to keep them
2 out of the picture."

3 You use the word "it" and he uses the word "it." What did
4 you mean by "it"? When you said, "But they don't have to know
5 about it," what is "it"?

6 A. Referring to the, quote/unquote, blood donation, which
7 referred to fighting.

8 Q. And counsel asked you -- or said to you, "Lots of people
9 go to Yemen to study," and you said, "Well, I don't know
10 anyone. I can't think of anyone"?

11 A. Yes.

12 Q. And what was your understanding as to why Mr. Mehanna went
13 to Yemen in 2004?

14 MS. BASSIL: Objection.

15 THE COURT: Sustained as asked.

16 BY MR. AUERHAHN:

17 Q. Now, see at the bottom where Mr. Mehanna says, "But
18 seriously, if I try to go again, would you come?" And then the
19 next line you say, "Yes, dude. I'm dead serious." What were
20 you agreeing to do?

21 A. Go fight.

22 MR. AUERHAHN: No further questions, your Honor.

23 RECROSS-EXAMINATION

24 BY MS. BASSIL:

25 Q. Good morning.

1 A. Good morning.

2 Q. Let me go right back to what you just talked about just
3 this -- a minute ago.

4 MS. BASSIL: Could we have Exhibit 617 back up,
5 please? And if we could have the second page, please.

6 Q. Can you see this? Do you need it bigger?

7 A. Please.

8 MS. BASSIL: Please, could you make it bigger?

9 Q. This conversation -- can you see it?

10 A. Yes.

11 Q. This conversation -- this conversation with Mr. Mehanna
12 was about the book "The Oath" that you had bought, right --

13 A. Yes.

14 Q. -- and you had read?

15 And it was about an insurgent in Chechnya?

16 A. That's correct.

17 Q. And, in fact, you said --

18 MS. BASSIL: If we could have page 3. And if we could
19 have just the very top there. Thank you. If we could have
20 that bigger.

21 Q. You said, "I want to go there after reading this, man."
22 That was your comment, correct?

23 A. That's correct.

24 MS. BASSIL: Now, if we could go, then, to page 8 -- I
25 believe if we could have page 9 of the same exhibit, please.

1 Thank you.

2 Q. Mr. Auerhahn just went over with you about going to Yemen
3 with Mr. Mehanna, and you said, "Yes, dude. I'm dead serious."
4 But on the next page you talk about needing three grand for an
5 apartment for a wife and that it was costly, correct?

6 A. I believe that was Tarek that said that, yes.

7 Q. All right. But you said, "I need 3,000, is probably how
8 much I'd need," correct?

9 A. Right.

10 Q. Now, did you meet with the U.S. Attorney after your
11 cross-examination on Friday?

12 A. No, I did not.

13 Q. Okay. Did you talk to him?

14 A. No.

15 Q. Now, you were asked -- when Mr. Auerhahn came up here to
16 redirect you, you were asked about things that you didn't say
17 in the grand jury and that you had not met with them -- with
18 him before you went into the grand jury. Do you
19 remember -- these are just what we started off with this
20 morning, correct?

21 A. Yes.

22 Q. And, in fact, there are at least two occasions in the
23 grand jury in which Mr. Auerhahn was not happy with your lack
24 of memory, correct?

25 MR. AUERHAHN: Objection, your Honor.

1 THE COURT: Sustained.

2 BY MS. BASSIL:

3 Q. Do you remember in the grand jury you were asked -- when
4 you were testifying you were told --

5 MR. AUERHAHN: Objection, your Honor. She seems to be
6 reading the same thing to which you just sustained an
7 objection.

8 THE COURT: Well, the objection was sustained as to
9 the form of the question.

10 MS. BASSIL: Correct.

11 MR. AUERHAHN: May I take this back from the witness?

12 THE COURT: Yeah.

13 MR. AUERHAHN: Thank you, your Honor.

14 BY MS. BASSIL:

15 Q. On one occasion in the grand jury you were told by
16 Mr. Auerhahn, "You're still under oath, which means a false
17 statement, you can find yourself prosecuted for perjury or
18 obstruction of justice or both." He said that to you, didn't
19 he?

20 A. Yes.

21 Q. And on another occasion in the grand jury -- actually, in
22 the grand jury do you recall asking for some kind of memory
23 refresher from the government?

24 A. Yes, I did.

25 Q. All right. And did you -- were you aware that there were

1 these instant messages that you had had back and forth with
2 Tarek?

3 A. Before going in or --

4 Q. Yes.

5 A. Yes, I was.

6 Q. Did you know if the government had them?

7 A. No.

8 Q. Did you have occasional emails with Tarek?

9 A. Like I said yesterday, it was more the articles or things
10 that he had written that he sent me.

11 Q. All right. But you asked the government for a memory
12 refresher, did you not?

13 A. Yes, I did.

14 Q. Okay. And that's because you were afraid of saying
15 something wrong, correct?

16 A. Yes.

17 Q. And you said that you wanted -- you said, "I honestly
18 don't remember details for that -- for that conversation.
19 Anything to refresh my memory?" And they did not give you
20 anything to refresh your memory. Is that correct?

21 A. No, I believe there were some tidbits that were read to me
22 to...

23 Q. Okay. They certainly didn't give you a package of these
24 instant messages for you to read before you went into the grand
25 jury?

1 A. No.

2 Q. Okay. Now, Mr. Auerhahn brought up this CD of September
3 11th, and he asked you if you were asked who gave it to you.
4 You were asked in the grand jury who gave it to you and you
5 said no, you were not asked that.

6 A. I can't recall.

7 Q. Okay. Let me go step by step.

8 This morning when Mr. Auerhahn asked you about the
9 September 11th CD, he asked you if you were asked in the grand
10 jury who had given it to you.

11 A. No. No, he showed me a conversation --

12 Q. About that CD?

13 A. Yes. And I said I didn't recall or I couldn't tell
14 conclusively from the conversation I was shown.

15 Q. Okay. And from the conversation you were shown or the
16 testimony in the grand jury, you didn't know if you were asked
17 who gave it to you?

18 A. Right.

19 Q. Okay. That's what I wanted to be clear about.

20 A. Okay.

21 Q. But you knew that you were in the grand jury, your
22 subpoena was -- you knew you were in there to testify about
23 Tarek Mehanna, correct?

24 A. Yes.

25 Q. Now, Mr. Auerhahn said you were not an Islamic scholar.

1 He asked you that this morning, correct?

2 A. Yes.

3 Q. But the questions I was asking you on Friday, they were
4 pretty basic, were they not?

5 A. Yes.

6 Q. I mean, I'm not an Islamic scholar. I was asking you
7 pretty fundamental stuff, right?

8 A. Right.

9 Q. Did I get most of it right?

10 A. For the most part.

11 Q. Okay. And you were interested in this. You studied this.

12 A. Yes.

13 Q. Do you continue to study it?

14 A. Not as much.

15 Q. Okay. Now, Mr. Auerhahn also asked you if Mr. Mehanna was
16 angry about -- I'm sorry -- what he said in reference to
17 current conflicts. And I think you said he was angry over U.S.
18 troops. Do you recall that?

19 A. Yes, I do.

20 Q. Okay. Do you recall where you were when these
21 conversations occurred about U.S. troops?

22 A. No.

23 Q. When they occurred?

24 A. Not specifically, no.

25 Q. Who else was there?

1 A. No, not off the top of my head.

2 Q. Now -- and, in fact, on Friday you testified that when
3 there were conversations about U.S. troops or the plight of the
4 Muslims or videos, it was clear to you -- that no one ever
5 said, "We have to get up and do something," correct?

6 A. It was not said explicitly.

7 Q. All right. And, in fact, Tarek said he would talk about,
8 "We're living our comfortable lives and look what's happening
9 to Muslims overseas," correct?

10 A. Yes.

11 Q. Now, Mr. Auerhahn --

12 MS. BASSIL: If we could have Exhibit 635.

13 Q. And I'll just describe it for you rather than have you
14 scroll through. This was about choosing a name for your
15 password that we just talked about?

16 A. Yes.

17 Q. And it was -- you were looking at Abul-Hassan or
18 Abu-Usama, correct?

19 A. Yes.

20 Q. And Mr. Mehanna suggested Abu WTC. That was a joke, was
21 it not?

22 A. Yes.

23 Q. Now, Mr. Auerhahn asked you if Tarek Mehanna and
24 Ahmed Abousamra -- I'm sorry. I might have that wrong. Let me
25 just apply it to Tarek because I don't remember -- but that he

1 knew more about the leaders of al Qa'ida than you did, correct?

2 A. Yes.

3 Q. But, in fact, you wanted to learn more, did you not?

4 A. Yes.

5 Q. You said, I think, in one of the messages, "I want to know
6 as much of them as I know about the Ten Companions"?

7 A. I said that with regards to the hijackers.

8 Q. Right.

9 A. Yes.

10 Q. Now, Mr. Auerhahn asked you when Ahmad Abousamra -- and
11 I'm paraphrasing here -- was sort of going on and on about
12 things, did Tarek Mehanna ever get up and argue with him? Now,
13 that was not Tarek's way, to argue with people, was it?

14 A. No.

15 Q. He would just get quiet?

16 A. That's reasonable, yes.

17 Q. And when the two of you, you and Tarek, in that instant
18 message talked about how you miss the old Ahmed and Tarek said,
19 "He's still a good brother," you felt that way too?

20 A. Certainly.

21 Q. Now, although both of you seemed -- well, strike that.

22 You were sort of concerned about the level of Ahmed's sort
23 of accusations, diatribes, correct?

24 A. I don't understand the question.

25 Q. Okay. Bad question.

1 Ahmed's going on and on about things made you
2 uncomfortable, did it not?

3 A. Sure.

4 Q. And, in fact, Tarek was agreeing with you that he was
5 constantly bringing things up like Jewish conspiracies and
6 things like that?

7 A. Right.

8 Q. All right. And both of you were saying you kind of missed
9 him before he got like that?

10 A. Right.

11 Q. Now, you said that -- and I think you clarified it, but I
12 just want to be clear. You saw -- you would see Tarek every
13 two or three months, I think you said on Friday?

14 A. Well, you asked me and I said, yeah, that's about right.

15 Q. All right. And sometimes -- many of the times you met
16 with him or with a group of people, it would be about religious
17 things that you were talking about, correct?

18 A. Yes.

19 Q. Like when you were -- when you would meet down in Quincy,
20 you would have dinner and you'd talk about a particular passage
21 of the Qur'an or a Hadith?

22 A. Yeah, this occurred frequently, yes.

23 Q. And, in fact, when Mr. Auerhahn went over that long
24 instant message about a sermon you were going to give where
25 Tarek made some suggestions, correct?

1 A. Yes.

2 Q. And he made -- he gave you a Hadith about how to get a
3 million good deeds, he quoted the Messenger, correct?

4 A. Yes.

5 Q. He talked about building a wall of honor for Islam, right?

6 A. I believe so.

7 Q. And then he did bring up Osama bin Laden, correct?

8 A. Yes.

9 Q. And in these messages you and Tarek would go back and
10 forth. Sometimes you would bring up Osama bin Laden.

11 A. Yes.

12 Q. All right. And do you recall --

13 MS. BASSIL: If we could have Exhibit 626, please?

14 I'm sorry, 624. I apologize.

15 (Pause.)

16 Q. I don't seem to have the correct number, but let me ask
17 you about this: Do you remember on Friday I asked you about
18 Tarek talked to you about a man named Yusuf Estes who was going
19 to be giving a talk in Worcester?

20 A. Yes.

21 Q. And he was a convert to Islam?

22 A. Yes.

23 Q. And immediately after Tarek talked about wanting to see
24 him, you brought up information about Zarqawi?

25 A. Yes.

1 Q. And I think Mr. Auerhahn brought up that at times -- he
2 asked you if Mr. Mehanna confided in you. Do you recall that?

3 A. Yes.

4 Q. And wasn't also one of the topics of conversation about
5 him finding someone to get married to?

6 A. Yes.

7 Q. And that came up pretty often, didn't it?

8 A. Yeah.

9 MS. BASSIL: I have no further questions.

10 THE COURT: All right, Mr. Aboubakr. Thank you. You
11 may step down.

12 (The witness is excused.)

13 THE COURT: Jurors, we have a little bit of an issue
14 we have to resolve before we proceed with further evidence, so
15 we're going to ask you to step out and we're going to take a
16 short recess.

17 THE CLERK: All rise for the Court and the jury. The
18 Court will take a recess.

19 (The Court and jury exit the courtroom and there is a
20 recess in the proceedings at 10:24 a.m.)

21 (Court in at 11:17 a.m.)

22 THE COURT: That took longer than I thought
23 partly because --

24 MR. CHAKRAVARTY: Sorry, your Honor.

25 THE COURT: -- the clips were not as short as

1 predicted.

2 MR. CHAKRAVARTY: That's my negligence, your Honor. I
3 apologize.

4 THE COURT: I have looked at them. So if there's an
5 objection, I'll entertain it.

6 MR. CARNEY: Yes. May we go video by video? Or how
7 do you want to do this for this witness? I'm not sure what
8 ones your Honor's looked at.

9 THE COURT: I looked at the ones that were identified.

10 MR. CARNEY: If you'll give me the number, I'll be
11 able to address them.

12 THE COURT: 33, there were three different clips; 41;
13 58. I did not look at 449 and 450 because that's the whole
14 Umar Hadeed video, isn't it?

15 MR. CHAKRAVARTY: It is. We would play the first two
16 minutes, fifteen seconds of one and one minute, fifteen seconds
17 of the next.

18 THE COURT: I guess start with the lowest number,
19 which is 33. Is that the Qahtani?

20 MR. CHAKRAVARTY: It is, your Honor.

21 MR. CARNEY: Your Honor, the fact that the defendant
22 had possession of this video adds nothing probative to this
23 case, but the prejudice of what's contained on this video can
24 be so intimidating, appalling, to the jurors, both the
25 statements made, the manner in which they are stated. It

1 doesn't show that he was part of a conspiracy and acting at the
2 direction of al Qa'ida or that he was in direct coordination
3 with al Qa'ida. The prejudicial value is enormous to have this
4 video be played. And for that reason, we object to it.

5 MR. CHAKRAVARTY: Very briefly, in addition to the
6 defendant having possession of this video, the government would
7 offer two chats where the defendant is discussing the contents
8 of the video. One of them, I believe, Mr. Aboubakr has already
9 testified about.

10 There is a gap -- the government is intending to play
11 this without sound. The translation is -- can be done at some
12 later time to be able to clarify what the defendant is asking
13 his counterparts on -- in the chat sessions where he discusses
14 particular time stamps. The contents can be elaborated on
15 later, but the -- in terms of explaining the fact that this
16 defendant was encouraging other people to watch certain parts
17 of this video for a particular purpose, I think is important to
18 the case.

19 With regards to the prejudicial aspects of it, there
20 are two which the government flags. One is something that your
21 Honor did not view. Between the first clip and the second
22 clip, there were two beheadings on this video. The witness
23 would say, between those two clips, there were two beheadings
24 on this video, to shield the jury from that.

25 The clip involving the World Trade Center getting

1 struck is important to convey to the jury that the purpose of
2 this video is to talk about attacking Americans. And the
3 picture speaks a thousand words in that sense. It's not
4 particularly graphic. It's the same news footage and clips
5 that we've all seen, granted, some ten years ago. So the
6 government would offer each of the clips.

7 MR. CARNEY: May I respond briefly, please? The mere
8 mention of beheadings would strike such shock and fear and
9 distaste and emotions in the jury. What does the beheading
10 have to do with this case? Does it show that the defendant was
11 under the direction of al Qa'ida? No. Does it say that the
12 defendant's point of view is that Muslims, in a Muslim country,
13 can defend their country? It might. But we've already had 50
14 exhibits, conversations, videos, and emails about that.

15 How does a beheading add to that instead of -- instead
16 of simply raising the emotional ire of the jury? You can't say
17 beheadings in this context. It's primitive. It's barbaric.
18 It's every word that everyone would think of. But the fact
19 that the defendant had that in his possession does not mean
20 that it should be admitted in this trial if it doesn't go to
21 the core issue of whether he's acting at the direction of al
22 Qa'ida.

23 In regard to photos of 9/11, it's impossible at this
24 point not to see those and be inflamed about them once again.
25 And the prejudice is unable to be curtailed by any instruction

1 the Court could ever give, any jury selection process that the
2 Court ever went through. And it is just unnecessary to prove
3 the defendant's state of mind. And it does not show that he's
4 involved in a conspiracy. And I would ask that it be excluded.

5 THE COURT: All right. The objection is overruled. I
6 think the clips that I saw do have probative value, and they're
7 not outweighed by prejudice.

8 I would note that the beheadings, as Mr. Chakravarty
9 pointed out, are not shown. And the footage of the World Trade
10 Center struck me as things we see in retrospectives on national
11 TV. It's actually an image I think people are inured to at
12 this point.

13 MR. CARNEY: But would you allow it in a trial to show
14 as evidence against this man?

15 THE COURT: Yes.

16 So, now, let me just ask about the beheadings, though,
17 because one of the other clips I saw went right up to the point
18 of beheading.

19 MR. CHAKRAVARTY: Right. But it, importantly, did not
20 cross that threshold.

21 THE COURT: I think that's part of 41. Am I correct
22 about that?

23 MR. CHAKRAVARTY: Yes. That's 41, your Honor.
24 There's another video, not that we're going to present with
25 this witness, which also gets right up to that point put then

1 does not --

2 THE COURT: Is it your intention to show the -- 41, as
3 I recall, is ten minutes long.

4 MR. CHAKRAVARTY: We were going to play about five
5 minutes. That's where the five minutes came to my mind, your
6 Honor. I apologize. We were going to play five minutes of
7 that. I think that does include that scene, which is nested,
8 where it shows a captive, and they were preparing to behead.

9 MR. CARNEY: Any mention of beheadings creates a
10 picture in the jurors' minds that is horrific and graphic.
11 What does the fact that the defendant legally possessed a
12 video, available on the internet, of beheadings have any
13 probative value in this case? It has none. It's just designed
14 to shock and appall the jurors, as any of us would be appalled.

15 I respectfully submit that this is exactly the
16 gatekeeper function that your Honor is hold to play here so
17 that just because the government wants to show stuff, doesn't
18 mean it gets shown to the jury. I mean, this is -- this is
19 material that's coming in in this case that I don't think has
20 come in or I don't know has come in at any of these comparable
21 cases.

22 The reason the government keeps showing all this stuff
23 is to shock and overwhelm the jury because they don't have
24 direct evidence that he was at the direction of al Qa'ida. So
25 their theory is: We will show as much as we possibly can to

1 prejudice this jury against Tarek Mehanna so they cannot reach
2 a reasoned verdict no matter what careful instruction your
3 Honor gives. It's denying this man a fair trial. This is
4 America. This is not how these trials should be run,
5 respectfully, your Honor. The government has got to stop
6 trying to poison this jury.

7 MR. CHAKRAVARTY: This is a video the defendant was
8 asked to translate. He had a translation on his computer. The
9 defendant -- the material is a production of al Qa'ida and goes
10 directly to the issue of whether the defendant conspired to
11 provide material support to al Qa'ida.

12 MR. CARNEY: Your Honor, they know he did not
13 translate that document. That document was translated when it
14 was sent to the defendant. And they know he was asked to edit
15 the document, and they know he did not edit it.

16 MR. CHAKRAVARTY: I don't know about the last point,
17 but I know that he was asked to edit the document.

18 MR. CARNEY: They have no evidence that he translated
19 it.

20 THE COURT: Did he forward it; did he disseminate it?

21 MS. BASSIL: No.

22 MR. CHAKRAVARTY: As to whether he disseminated this
23 video?

24 THE COURT: Yeah.

25 MR. CHAKRAVARTY: We don't know whether he

1 disseminated the video, your Honor.

2 MR. CARNEY: So he didn't create it. He didn't
3 translate it. He didn't edit it, even though he was asked to
4 do it, and he didn't send it to anybody. It basically is the
5 equivalent of something that arrives in your mailbox, and based
6 on that, the government wants to introduce it, no matter how
7 horrific it is.

8 MR. CHAKRAVARTY: Something arrives in your mailbox
9 because you're working with others who are in the business of
10 translating materials for al Qa'ida and one of your
11 coconspirators says, Hey, do you mind doing this because it
12 needs heavy editing. A brother has already done the
13 translation, but it needs heavy editing. Since you are one of
14 our translators, will you do this? And the defendant says yes.

15 MS. BASSIL: He didn't say yes.

16 MR. CARNEY: I would ask the government to show --

17 MR. CHAKRAVARTY: Exhibit 512, last paragraph.

18 MR. CARNEY: Your Honor, he did not edit this
19 document, and the government knows it.

20 THE COURT: Mr. Groharing handed it to the wrong
21 people. I assumed that you had a copy of it. I don't, at
22 least handy.

23 MS. BASSIL: That's what they gave us. We're looking
24 at a different copy.

25 MR. CHAKRAVARTY: Your Honor, the government would

1 also offer 502 in connection with this --

2 THE COURT: This says "502" and this one says "512."

3 THE CLERK: Is this 502?

4 MR. GROHARING: Yes.

5 THE COURT: Okay. I think the chats are probative to
6 the existence of a conspiracy, and I think the video can be
7 used in conjunction with that.

8 MR. CARNEY: Your Honor, I move for a mistrial.

9 THE COURT: Denied.

10 MR. CARNEY: Is -- what is the next number your Honor
11 has?

12 THE COURT: Next number was 58.

13 MR. CARNEY: This is probably the most prejudicial
14 video in the possession of the government, and I'm talking
15 about it exceeding videos of Humvees blowing up. It exceeds
16 video of the World Trade Center. The images depicted on this
17 video are graphic and horrific, in the video that I've been
18 provided.

19 THE COURT: Is it --

20 MR. CHAKRAVARTY: Just to clarify, so this is about a
21 five-minute video which the government has pared down to the
22 first 40 seconds which does not depict -- this was the subject
23 of one of the defendant's motions in limine.

24 THE COURT: One of them began with some Russian, or is
25 that -- is that 41?

1 MR. CARNEY: Are you talking about 58?

2 THE COURT: Maybe that was one we miss-hit it, I
3 think. I think that was a different one. We were on the wrong
4 clip.

5 MR. CHAKRAVARTY: This one, it's in Arabic. There's a
6 depiction of Osama bin Laden between the seconds ten through
7 about forty, at which point the clip cuts off. After forty
8 seconds, the witness would describe that what is depicted is
9 the mutilated remains of two American servicemen. Those
10 remains are not going to be shown to the jury. But the
11 defendant, on repeated occasions, distributes and discusses
12 this video with several of his -- the other participants in the
13 instant messages.

14 THE COURT: Is this witness Arabic speaking?

15 MR. CHAKRAVARTY: He is.

16 THE COURT: Will he translate some of the matters?

17 MR. CHAKRAVARTY: On Friday, pursuant to the Court's
18 instruction, we had done a verbatim translation of the first
19 several scenes, including the speech of Osama bin Laden, which
20 leads up to the depiction of the corpses. This witness would
21 describe simply what he observes without translating anything
22 else from the forty seconds on.

23 MR. CARNEY: I have an objection to that if he's
24 describing what he -- if he's translating --

25 THE COURT: It's a substitute for showing it.

1 MR. CARNEY: It's -- so that instead of it being the
2 horrific graphic, he's able to describe the horrific graphic
3 and so, therefore, it's nonprejudicial?

4 THE COURT: If he weren't allowed to describe it, then
5 we would confront the question whether the graphic was
6 probative enough to be in evidence. That's the problem. I
7 think you're better off with the description.

8 MR. CARNEY: The description has no probative value to
9 the case. It doesn't go to prove the defendant's state of
10 mind.

11 THE COURT: Let me just ask the link to issues in the
12 case. With the last one -- I'm looking at the chats -- it
13 appeared to me that it was -- it was probative at least on the
14 question of the existence of a conspiracy.

15 MR. CHAKRAVARTY: So this one is the so-called Texas
16 Barbecue video, your Honor. The defendant discusses, what the
17 government alleges, is the appropriate solution, the
18 appropriate response to American transgressions, especially in
19 Iraq, by taking matters into their own hands and this graphic
20 -- this image --

21 THE COURT: Discusses where?

22 MR. CHAKRAVARTY: In chats, in chat sessions, your
23 Honor, in several -- the government was going to highlight
24 about four of them.

25 THE COURT: With whom?

1 MR. CHAKRAVARTY: With various individuals. One is
2 with a person named Tauqir. One is with a person named Ihab;
3 one is with one of the Tibyan Publications participants named
4 Abu Saqr -- two of them are with Abu Saqr. There are others as
5 well, but the government was only going to refer to these four
6 at this time.

7 MR. CARNEY: So the defendant spoke to an acquaintance
8 and said, You ought to see this video that I have.

9 THE COURT: On that proffer, I don't think there's
10 enough for this one. I don't think it, as with the other one,
11 suggested conspiracy as opposed to discussion.

12 MR. CHAKRAVARTY: Your Honor --

13 THE COURT: For the time being. Maybe you can come
14 back to it. I don't know. Just from the state of the
15 evidence.

16 MR. CARNEY: Is the next one 449, your Honor?

17 THE COURT: So that was 58.

18 MR. CHAKRAVARTY: Your Honor --

19 MR. CARNEY: Is the next one 449?

20 MR. CHAKRAVARTY: -- if I may, for reasons other than
21 the existence of a conspiracy but, rather, what the objective
22 of the conspiracy is, specifically here, that attacks or
23 killing U.S. soldiers is an appropriate response. There is a
24 conspiracy to kill here.

25 THE COURT: I'm not sure, for that point, it's not

1 cumulative. There might be other matters, but for now, I would
2 sustain the objection to that.

3 MR. CHAKRAVARTY: All right.

4 MR. CARNEY: Does the next one your Honor --

5 THE COURT: Well, the next two that were referenced
6 were 449 and 450, which is the entire Umar Hadeed videos.

7 MR. CHAKRAVARTY: It's the State of the Ummah video.

8 THE COURT: Sorry. The State of the Ummah video. I
9 didn't actually look at the whole thing because it's an hour
10 and a half.

11 MR. CHAKRAVARTY: The first two minutes, fifteen
12 seconds is largely a speech, which has subtitles from Osama bin
13 Laden. Explains that the video is from Alashaab Media
14 Production, which is relevant to the fact that the defendant
15 was translating, therefore. The second one minute, fifteen
16 seconds from Exhibit 450 depicts, again, Osama bin Laden
17 calling youth to come engage in fighting, and it depicts a
18 training camp.

19 MR. CARNEY: This video was shown on Al-Jazeera, your
20 Honor, which, as you know, is comparable to CNN. The fact that
21 it is a publicly available document for anybody to see suggests
22 that it somehow is a crime to be listening to the words of
23 Osama bin Laden.

24 Once again, one of the goals of the prosecution is to
25 mention Osama bin Laden's name as much as possible and to show

1 the Twin Towers as often as possible. Where is the direct
2 connection that shows that there is a conspiracy with the
3 defendant? Because he went on Al-Jazeera and looked at a video
4 there? The defendant looked at Al-Jazeera and then he would
5 look at CNN and then look at Al-Jazeera and look at CNN. And
6 at their websites, they have an ability to download things, and
7 he downloaded them. That neither shows a conspiracy, nor does
8 it show the defendant's state of mind that he would look at
9 this and download it.

10 THE COURT: Well, the objection is overruled as to
11 this. I mean, the defense is sort of suggesting that every
12 piece of evidence has to prove the entire case, and that's
13 certainly not the way things --

14 MR. CARNEY: No. What I'm suggesting, your Honor, is,
15 if the government is trying to make a point, for example, in
16 the example I gave this morning. If a defendant is charged
17 with killing a black man, and he says, I had nothing to do with
18 it, and the defendant is a racist and he says, Yeah, I am a
19 racist. I don't like black people. And the government puts in
20 a couple of exhibits confirming he doesn't like black people.
21 He said some crude things, some appalling things. He's got
22 some crude videos. He speaks in chats all the time.

23 And if the defense counsel at the outset said, My
24 client's a racist, but that doesn't mean that he killed the
25 person, then the government should focus on establishing that

1 he's a racist. The government in this case has established
2 that Mr. Mehanna believes Muslims have the right to defend
3 their countries against invading armies. They've proved it
4 over and over and over again.

5 I'm not suggesting that they have to prove their whole
6 case in one video. But if this snippet is designed to show
7 state of mind, I don't know how much more I can concede it than
8 what I did in my opening. If it's designed to show conspiracy,
9 it doesn't show conspiracy. It shows the exercise of the First
10 Amendment to read something.

11 THE COURT: Okay. The objection is overruled. That
12 can be used.

13 MR. CARNEY: I move for a mistrial, your Honor, if
14 you're going to permit that.

15 THE COURT: Denied.

16 Are we ready for the jury?

17 (Jury in at 11:39 a.m.)

18 THE COURT: Jurors, again, thank you for your
19 patience. It took us a little longer than I thought to resolve
20 the question. But we're ready to move on now. Mr.
21 Chakravarty.

22 MR. CHAKRAVARTY: Thank you, your Honor. The
23 government calls Andre Khoury.

24 MR. CARNEY: May I have a continuing objection to the
25 matters we discussed?

1 THE COURT: Yes, of course.

2 ANDRE KHOURY, Sworn

3 THE CLERK: Please be seated. State your name and
4 spell your last name for the record.

5 THE WITNESS: It's Special Agent Andre Khoury,
6 K-H-O-U-R-Y.

7 DIRECT EXAMINATION BY MR. CHAKRAVARTY:

8 Q. Good morning, Mr. Khoury. Where do you work?

9 A. At the FBI office in Boston.

10 Q. Okay. What position do you have there?

11 A. I'm a special agent.

12 Q. How long have you been a special agent?

13 A. For 15 years.

14 Q. What is your -- what squad are you on?

15 A. Right now, I work on the Field Intelligence Group Squad.

16 Q. In the 15 years that you've been with the FBI, what has
17 been your subject matter?

18 A. I have worked terrorism for my entire career.

19 Q. When did you first start at the FBI?

20 A. I joined the FBI in 1996.

21 Q. Where were you assigned at that point?

22 A. I was assigned to the Washington field office on the
23 Extra-Territorial Squad.

24 Q. What did that involve?

25 A. It involved investigating overseas cases of terrorism.

1 Q. And after that, where were you assigned?

2 A. Then I was assigned to Boston for a brief period before I
3 was transferred overseas.

4 Q. What was your first overseas assignment?

5 A. I was one of the FBI representatives in Egypt.

6 Q. How long were you there?

7 A. I was there from 2002 to 2004.

8 Q. And after, where did you go?

9 A. Amman, Jordan.

10 Q. How long were you in Jordan?

11 A. I was in Jordan from 2004 to 2007.

12 Q. What was your assignment in Jordan?

13 A. I was the FBI representative in their country. I'm sorry.
14 It was the end of 2006.

15 Q. And after Jordan, where did you go?

16 A. Rabat, Morocco.

17 Q. Again, were you assigned to the Moroccan -- to be the
18 attache in Morocco?

19 A. Exactly. I was the FBI representative in Morocco until
20 the end of 2007.

21 Q. After Morocco, where did you go?

22 A. After Morocco, I left the FBI briefly, for a period of a
23 year and a half, and I worked for Goldman Sachs in the United
24 Arab Emirates based in Dubai.

25 Q. At some point, you rejoined the FBI?

1 A. That's correct. In 1999, I came back to Boston.

2 Q. 2009?

3 A. I'm sorry, 2009.

4 Q. And you returned to Boston under which squad?

5 A. The Field Intelligence Group.

6 Q. In addition to these assignments that you've had, have you
7 also, on special projects, have you also had occasion to travel
8 around the world?

9 A. Yes, I have.

10 Q. Again, in what capacity?

11 A. As an investigator in terrorism cases.

12 Q. More recently, last year, did you have an overseas
13 assignment?

14 A. I did.

15 Q. Where was that?

16 A. That was in Jerusalem, working with the Palestinian
17 Authority in the West Bank.

18 Q. And now you're back here in Boston, at least for now?

19 A. For now.

20 Q. In addition to these assignment overseas, did you have
21 particular projects in other countries? And let me -- I'll
22 walk you through some of them. Did you serve in Yemen?

23 A. Yes, I have.

24 Q. When was that?

25 A. That was in 2000, after the USS Cole bombing.

1 Q. Again, was that in an investigative capacity?

2 A. That's correct.

3 Q. Did you serve in Saudi Arabia?

4 A. Yes, I have.

5 Q. When was that?

6 A. I served in Saudi Arabia multiple times: 1996 or early
7 1997, I was there investigating the Khobal Tower bombing. Then
8 I worked in establishing the office of the legal attache, the
9 FBI office in Saudi Arabia, for a couple of years. And then in
10 2003, I was there during --

11 MR. CARNEY: I object, please.

12 THE COURT: Overruled. Go ahead.

13 A. And in 2003, I was there for a period of nine months, ten
14 months, investigating the bombings of the compounds in Saudi
15 Arabia.

16 Q. Was that in Riyadh?

17 A. That's correct.

18 Q. Did you serve in Pakistan?

19 A. Yes, I have.

20 Q. Approximately when?

21 A. I wouldn't say serving in Pakistan. Pakistan was more of
22 flying in to do some investigations with the Pakistani
23 counterparts, trying to target some high-level al Qa'ida
24 individuals after the 9/11 attacks.

25 Q. Were you in East Africa at some point?

1 MR. CARNEY: I object. May we approach, please?

2 THE COURT: All right.

3 (SIDEBAR CONFERENCE AS FOLLOWS:

4 MR. CARNEY: Your Honor, this witness has no direct
5 connection to this case whatsoever as an investigator, to my
6 knowledge. He is simply going to be the person who sits on the
7 stand and reads documents. What we're hearing is a tour of the
8 world of terrorist activity, and I just don't think that's
9 necessary when someone is just going to be reading.

10 MR. CHAKRAVARTY: He's also going to be presenting
11 maps and orienting the jury as to where certain places are.

12 MS. BASSIL: No one told us --

13 MR. CARNEY: My daughter could present maps to the
14 jury. And it does not need to have a recitation of I went to
15 this terrorist site and that terrorist site. It's not
16 necessary. I'd ask that we move to the reading.

17 MR. CHAKRAVARTY: The fact that he's familiar with
18 this place helps shed light in terms of --

19 THE COURT: Is there more?

20 MR. CHAKRAVARTY: Not much more of his background.
21 He's going to establish that he's an Arabic speaker, and then
22 we're going to get into the maps.

23 THE COURT: What about this travel? Anymore of his
24 travels? I mean, I tend to think we do have enough.

25 MR. CHAKRAVARTY: I'm not trying to sugarcoat it, your

1 Honor. Some of those places are going to be relevant to what
2 his description is of things he's going to later discuss.

3 MR. CARNEY: If you don't think this is sugarcoating,
4 then you think cotton candy is a dietary supplement.

5 THE COURT: Let's move on. If at some point he wants
6 to talk about something that he needs more background, we can
7 get the background.

8 . . . END OF SIDEBAR CONFERENCE.)

9 Q. Agent Khoury, just one final geography question about your
10 service. At some point, did you serve in Iraq as well?

11 A. Yes, I did.

12 Q. What is your background?

13 A. I'm originally Lebanese. I was born and raised in
14 Lebanon.

15 Q. Attended college here and joined the FBI several years
16 ago?

17 A. Correct. I moved to the United States in 1988, and I
18 attended college here in the Boston area.

19 Q. Do you speak and understand other languages?

20 A. Yes, I do.

21 Q. Specifically which languages?

22 A. Arabic and French.

23 Q. Did you grow up speaking in Arabic?

24 A. That's right. That's the primary language in Lebanon.

25 Q. Have you used your Arabic language skills in the course of

1 your duties in the FBI?

2 A. Throughout my career.

3 Q. Have you, in fact, been asked to translate documents
4 before even though that's not your job?

5 A. Yeah, when need to.

6 Q. You described that you had been to Yemen.

7 MR. CHAKRAVARTY: And I'm going to call up, just for
8 the witness at this point, Exhibit 749.

9 Q. Do you recognize what this is?

10 A. It's a map of Yemen and Saudi Arabia with Somalia and
11 Djibouti below.

12 Q. Does it appear to be a fair and accurate depiction of that
13 area?

14 A. Yeah.

15 MR. CHAKRAVARTY: May I ask that this be introduced
16 and published as Exhibit 749?

17 MR. CARNEY: No objection. Thank you.
18 (Exhibit No. 749 received into evidence.)

19 Q. Agent Khoury, if you can -- and tell me if you can't read
20 any of the writing if it's relevant to your testimony. You
21 said at some point you were assigned in Yemen?

22 A. That's correct.

23 Q. And you mentioned that you were investigating the USS
24 Cole?

25 A. That's right.

1 Q. When was that?

2 A. That was in 2000. The USS Cole was -- if I'm not
3 mistaken, it was October of 2000. And after that is when I was
4 in Yemen.

5 Q. Can you just tell the jury what the USS Cole investigation
6 was?

7 MR. CARNEY: I object, your Honor.

8 THE COURT: Overruled.

9 A. The USS Cole was the suicide bombing that took place
10 against one of the U.S. ships that was docked in aid in Yemen
11 in October of 2000 where 19 sailors were killed.

12 Q. Who was responsible for that attack?

13 A. Al Qa'ida was.

14 Q. When you were there, was there an al Qa'ida presence?

15 MR. CARNEY: I object and move to strike.

16 THE COURT: I'll strike that answer. That may be his
17 conclusion, if that's the case. But I'll strike it, and the
18 jury will disregard it.

19 MR. CARNEY: May the jury be instructed of what effect
20 your Honor's striking --

21 THE COURT: I did. I just said the jurors will
22 disregard it.

23 MR. CARNEY: Excuse me.

24 Q. When you were in Yemen, was there an al Qa'ida presence in
25 Yemen?

1 A. A very big presence.

2 Q. Did you have the opportunity to travel throughout Yemen?

3 A. Yes, I have.

4 Q. Are you familiar with the area called Ma'rib?

5 A. Yes, I am.

6 Q. What is that?

7 A. It's --

8 MR. CARNEY: I object, and I'm sorry, but we need to
9 approach.

10 THE COURT: Okay.

11 (SIDEBAR CONFERENCE AS FOLLOWS:

12 MR. CARNEY: Your Honor, we were informed that this
13 person would be reading documents and, I expect, similarly to
14 how a previous person would read one end of a chat and this
15 witness would read another or read a document that is contained
16 below a video. We were given no notice whatsoever that he
17 would be offered as an expert in Yemen. And now we're hearing
18 he's talking about Cole, the presence of al Qa'ida, the
19 investigation of these things. Respectfully, that's far beyond
20 a reader. And we should have been given notice that he's a
21 Yemeni expert, and we have not been.

22 MS. BASSIL: We were not given any notice of his
23 background either or where he had been, that he had been in
24 Yemen or any of these places.

25 MR. CHAKRAVARTY: He's not a Yemeni expert. He's

1 explaining his basis of knowledge of explaining what this map
2 is and that he's familiar with this area.

3 THE COURT: What's Ma'rib?

4 MR. CHAKRAVARTY: Ma'rib is a place where the
5 defendant later -- the evidence will show, the defendant
6 allegedly went to. I'm honing in for the jury these locations
7 which they're going to hear about in this case. And he happens
8 to have been there.

9 THE COURT: Is he doing anything more than pointing to
10 it on the map?

11 MR. CHAKRAVARTY: No.

12 MR. CARNEY: Then I withdraw the objection.

13 MS. BASSIL: If all he's going to do is point to where
14 all these things are on the map, then I don't think we need to
15 know whether al Qa'ida had a presence or investigation or
16 anything of that nature. It's really unfair.

17 THE COURT: I agree. If he's starting to describe his
18 experience or knowledge about Yemen particularly because he's
19 acquired some specialized knowledge, then I think it would
20 probably put him in an expert category.

21 MS. BASSIL: We're not going to ask him the basis of
22 how do you know where Ma'rib is.

23 THE COURT: All he's going to do is point because he's
24 familiar with the geography.

25 MR. CARNEY: Then I would move to strike his testimony

1 about al Qa'ida and Yemen.

2 THE COURT: I did strike the testimony about al
3 Qa'ida.

4 MS. BASSIL: And the USS Cole.

5 MR. CARNEY: Well, the Cole, we can live with.

6 THE COURT: We'll leave it as is.

7 MR. CHAKRAVARTY: He's going to talk about going to
8 Iraq. I'm going to put an Iraq map up there. In some of the
9 chats that he's going to be reading, there are particular
10 events related to the background that he just described. For
11 example, when Abu Murab al-Zarqawi dies in 2006, he was
12 personally aware of it. I'm going to ask him, do you --

13 MR. CARNEY: I can get your Honor the email that was
14 sent to us regarding this witness, which is the only notice we
15 got about this witness because he never wrote a report. And
16 the one word says "reader." Reader is, he's supposed to be
17 reading.

18 THE COURT: Well, I think the line that I would draw
19 is where it becomes expert as opposed to personal experience.

20 MR. CHAKRAVARTY: That's always been the government's
21 intention.

22 THE COURT: Because that's what the notice -- you need
23 notice of an expert. I don't know that you need notice of
24 everything that a non-expert is going to say.

25 MS. BASSIL: That's -- your Honor, we have no notice

1 that he's ever been in Iraq, that he's ever been in Yemen.
2 He's going to talk about what was going on in Iraq, and we have
3 no --

4 THE COURT: Well, it depends on the questions. If
5 it's specialized knowledge --

6 MR. CHAKRAVARTY: He's a lay witness.

7 MS. BASSIL: He's a lay witness?

8 THE COURT: -- it will be excluded.

9 MS. BASSIL: Lay witnesses --

10 THE COURT: Okay. That's the line.

11 MS. BASSIL: That is specialized knowledge.

12 . . . END OF SIDEBAR CONFERENCE.)

13 Q. Agent Khoury, on the map in front of you, if you can --
14 the screen in front of you is actually touch sensitive. Can
15 you just circle the area that you know as called Ma'rib?

16 A. (Indicating). It didn't circle it exactly, but --

17 Q. Go ahead.

18 A. (Indicating.)

19 Q. I guess I've moved your circle. What's depicted on the
20 screen is the area called Ma'rib, is that right?

21 A. Correct.

22 Q. This is around the area that you circled?

23 A. That's right.

24 Q. And the capital of Yemen, would you identify that for the
25 jury?

1 A. It's Sanaa, right here (indicating).

2 Q. And then are there two main port areas, one down here,
3 around Aden?

4 A. Correct.

5 Q. And then one up here called Al Mukalla?

6 A. Al Mukalla.

7 Q. Agent Khoury, you described that you had been to Pakistan,
8 is that right?

9 A. That's right.

10 MR. CHAKRAVARTY: I'm going to call up Exhibit 751,
11 just for the witness, please.

12 Q. Does this appear to be a fair and accurate map of the
13 Pakistan area?

14 A. It's Pakistan, Afghanistan, and India all together.

15 Q. So the -- the area between Afghanistan and India, does
16 that appear to be Pakistan?

17 A. Correct.

18 Q. Would this help in your testimony today?

19 A. Could you please repeat that?

20 Q. Yes. Will this help in your testimony -- present your
21 testimony?

22 A. I can't really see it clearly.

23 Q. I'll blow it up for you.

24 A. Okay, yup.

25 MR. CHAKRAVARTY: I would ask that this be introduced

1 as Exhibit 751.

2 MR. CARNEY: No objection, your Honor.

3 THE COURT: All right.

4 (Exhibit No. 751 received into evidence.)

5 Q. I think you said that you were in Pakistan right after
6 9/11, around then?

7 A. (Nodding.)

8 Q. Is there a particular area which is known as the Khyber
9 Pass in Pakistan?

10 A. Well, it touches on the Peshawar area of Pakistan, which
11 is close to Afghanistan.

12 Q. Is that -- is that Peshawar in pixillated graphics?

13 A. Yeah, right. I see it.

14 Q. I'll make it a little bigger. So if this is Peshawar --
15 that's a city in Pakistan, is that correct?

16 A. That's correct.

17 Q. This is Jalalabad, which is in Afghanistan, is that right?

18 A. That's right.

19 Q. And this line here, this marks the border between the two
20 countries?

21 A. That's correct.

22 Q. You said that you had been to Afghanistan as well, is that
23 right?

24 A. That is not true.

25 Q. I'm sorry. I didn't -- thank you. So you had not been to

1 Afghanistan?

2 A. That's "not."

3 Q. You said you had been to Iraq, correct?

4 A. That's correct.

5 MR. CHAKRAVARTY: I ask to call up Exhibit 750 for the
6 witness.

7 Q. Does that appear to be a fair and accurate depiction of
8 the borders of -- and then the map of Iraq?

9 A. Yup.

10 MR. CHAKRAVARTY: I'd ask that this be introduced as
11 Exhibit 750.

12 MR. CARNEY: No objection, your Honor. Thank you.

13 THE COURT: Okay.

14 (Exhibit No. 750 received into evidence.)

15 Q. I draw your attention to a few of the cities here. You're
16 familiar with Baghdad, the capital?

17 A. Yes, I am.

18 Q. Is that right here? Did I accurately circle that?

19 A. You did.

20 Q. Are you familiar with Fallujah?

21 A. I am familiar with Fallujah, yes.

22 Q. Is this Fallujah here?

23 A. That's the right circle.

24 Q. Approximately what time were you in Iraq?

25 A. April of 2003 to August of 2003.

1 Q. Are you also familiar with Ramadi?

2 A. I am familiar with Ramadi.

3 Q. Did I accurately circle the area of Ramadi?

4 A. Yes, you did.

5 Q. Finally, just for -- to orient the jurors, are you
6 familiar with the city of Basrah?

7 A. I am.

8 MR. CHAKRAVARTY: I'm sorry, your Honor. Can I
9 introduce Exhibit 750 and publish it to the jury? I don't know
10 if they have it. Thank you.

11 Q. So, again, this is Baghdad; this is Fallujah; and this is
12 Ramadi, all in Iraq?

13 A. Yeah.

14 Q. And then is the city of Basrah down here in the south?

15 A. It is one of the southern cities, and it's right down
16 here, yeah.

17 Q. Agent Khoury, have you been to Saudi Arabia?

18 A. Yes, I have.

19 MR. CHAKRAVARTY: I'd ask to call up Exhibit 754,
20 again, initially, just for the witness.

21 Q. Agent Khoury, is this a broader view of the Arabian
22 Peninsula than the map of Yemen that we saw earlier?

23 A. That is correct.

24 Q. Okay. Does this fairly and accurately depict Saudi
25 Arabia?

1 A. Yes, it did.

2 MR. CHAKRAVARTY: I'd ask that this be published and
3 introduced.

4 MR. CARNEY: No objection, your Honor. Thank you.
5 (Exhibit No. 754 received into evidence.)

6 Q. All right. Agent Khoury, you said that at one point you
7 went to investigate some bombings in Riyadh. Can you show us
8 where Riyadh was -- is?

9 A. Riyadh is a gap of Saudi Arabia, and it's right here
10 (indicating).

11 Q. All right. Are there other significant cities in Saudi
12 Arabia, or is that the principal place of commerce?

13 A. There's a lot of principal cities in Saudi Arabia.
14 Obviously, they have Mecca and Medina. You have the eastern
15 province of Saudi Arabia where the Khobal Tower bombing was.
16 You've got Riyadh. I would say those possibly are the most
17 significant.

18 Q. I'm going to move on now to -- I'll ask you about your
19 relevant background if it comes up in the course of some of the
20 things we're going to talk about in a moment.

21 I'll move on to some of the media that you were asked to
22 view for purposes of testimony in this case.

23 A. Okay.

24 Q. Just to orient the jury, did you have a role in the
25 investigation of this case?

1 A. I did not investigate the case itself, but I sit next to
2 the squad that investigates the case, and we confer about it
3 every once in a while.

4 Q. So in this case, you were asked to review some media for
5 purposes of presenting that to the jury, is that right?

6 A. Right.

7 Q. Are you familiar with a film called State of the Ummah?

8 A. Yes, I am.

9 Q. What is that?

10 A. It's a compilation of different clips that are -- I have
11 seen on YouTube, and I also saw on a disk that was provided to
12 me. But it -- State of the Ummah is just a tape about
13 different clips that were aired on Al-Jazeera or the Saudi
14 Arabian TV or the Egyptian TV about different events that
15 happened in the world.

16 Q. This is a publicly available video?

17 A. Yes, it is.

18 Q. You said that you watched this video on YouTube. Is it
19 available on YouTube?

20 A. Yes, it is.

21 MR. CHAKRAVARTY: May I approach, your Honor?

22 THE COURT: You may.

23 Q. I'm handing you a disk. You mentioned that you also saw a
24 compact disk version of this video. Is what I've handed you a
25 copy of that disk?

1 A. That is correct.

2 Q. Have you had an opportunity to view clips of Exhibits 449
3 and 450 as they've been marked in this case?

4 A. Would this be the State of the Ummah CD you're talking
5 about?

6 Q. Yeah. Is this the video?

7 A. This is that CD that I've watched.

8 Q. So with regards to Exhibits 449 and 450, which were drawn
9 from that CD, are those the State of the Ummah video that you
10 watched?

11 A. Yes.

12 MR. CHAKRAVARTY: At this point, your Honor, I move to
13 introduce Exhibits 449 and 450 and then play it.

14 THE COURT: All right.

15 (Exhibit Nos. 449-450 received into evidence.)

16 MR. CHAKRAVARTY: Play the first two minutes and
17 fifteen seconds.

18 (Video played.)

19 Q. At the end of that first clip is a depiction of an
20 explosion, and there's a screen shot that says, "The
21 Destruction of the American Destroyer, the USS Cole." Is that
22 what you were referring to earlier?

23 A. Yes, I was.

24 MR. CHAKRAVARTY: And then I'm going to turn to Part 2
25 of this video, Exhibit 450, and I'll ask to publish minutes --

1 the first one minute and fifteen seconds.

2 (Video played.)

3 Q. Agent Khoury, I'm going to turn your attention now to some
4 of the defendant's stored instant message communications.

5 MR. CHAKRAVARTY: Can you call up Exhibit 657, which
6 should in evidence, your Honor. Go to Page 3. Actually, can
7 you just go back to Page 2, just the last line first.

8 Q. Agent Khoury, if we can read through this portion of this
9 chat. If you'd just start with this last line. And there's
10 something written in Arabic there. Do you know what that says?

11 A. It says, "Al Faqir Ila-Allah," which is the poor to God.

12 Q. The poor to God?

13 A. That's right.

14 MR. CHAKRAVARTY: If we could go back to Page 1 just
15 to orient the jury.

16 Q. Is the header information for that
17 ibnulkhattab82@yahoo.com and a conversation with a person named
18 Dan Spaulding on May 28 of 2006?

19 A. Correct.

20 Q. If you could just read that last line, then we'll -- I'll
21 take the role of Dan Spaulding if you take the role of the
22 defendant, and we'll just read the next portion.

23 A. "I was thinking of having all us bro over my house."

24 MR. CHAKRAVARTY: Next page, please.

25 Q. "When?"

1 A. "You, Ahmad, Ahmad al-Farsi, etc, sometime at the start of
2 June."

3 Q. "Oh."

4 A. "Maybe the week after Abdil Majid's thing."

5 Q. "Sure, inshaa-'Allaah, Allah willing."

6 A. "We can have a movie night."

7 Q. "What movie? State of the Ummah?"

8 A. "No. Heads up."

9 Q. Laugh out loud. "Heads up?"

10 A. Laughing, "joke."

11 Q. "Does it star Mr. Z?"

12 A. "Yes."

13 Q. "It should be heads off."

14 Did we accurately read that portion of that chat?

15 A. Yes.

16 MR. CHAKRAVARTY: I'm going to call up Exhibit 556,
17 please.

18 Q. Again, if -- sorry, just to orient the jury, is this a
19 chat that occurred on March 17, 2006, between the defendant and
20 a person named Ahmad Rashad?

21 A. That's correct.

22 Q. All right. If we could read through this chat. Ahmad
23 Rashad says, "Okay, akhi."

24 A. "The kid. At the beginning of the Afghan nasheed chant is
25 the shaykh's son."

1 Q. "Yeah?"

2 A. "Hamza."

3 Q. "Yeah, that's him. I don't know how many he has."

4 A. "He has 23 kids."

5 Q. "Oh, God bless."

6 A. "Yeah, he is the one in the State of the Ummah."

7 Q. That should be -- Rashad says, "Yeah, he is the one in the
8 State of the Ummah vid."

9 A. "Four wives, man, yeah."

10 Q. "We don't hear too much about them."

11 A. "Who?"

12 Q. "The kids."

13 A. "Yeah, well, hehe. He sent some of them out of
14 Afghanistan for protection."

15 Q. "I see."

16 Is that an accurate read of that portion of that Exhibit
17 556?

18 A. Yes.

19 Q. Agent Khoury, did you have an opportunity to view a video
20 called Wa Yakoon?

21 A. Yes, I have.

22 Q. I draw your attention to Exhibit 502. Is this a chat
23 dated February 5 of 2006 between the defendant and Abu Mundhir?

24 A. That's correct.

25 MR. CHAKRAVARTY: Let me go to Page 2, please.

1 MR. CARNEY: I object to this, your Honor, please, and
2 I'd ask to be heard.

3 THE COURT: All right. I'll see you at the side.
4 (SIDEBAR CONFERENCE AS FOLLOWS:

5 MR. CARNEY: Could I have one second? You all can
6 stay here.

7 THE COURT: Would it profit me to look at it or not?
8 Unless you're going to keep me out of it?

9 MR. CARNEY: I might be confused. This does not
10 relate to the one that his Honor excluded?

11 MR. CHAKRAVARTY: Correct. That was the Juthath video
12 which we're not going to --

13 MR. CARNEY: Okay. Thank you. Sorry for the
14 interruption.

15 Your Honor, I withdraw the objection.

16 THE COURT: Okay.

17 . . . END OF SIDEBAR CONFERENCE.)

18 Q. I'm going to start with this portion, and we'll go on to
19 the next page. Abu Mundhir says, "So I was thinking, Abu Anas
20 is pretty inspirational cause he talks himself instead of
21 people talking for him."

22 A. "And it shows him making du'ah."

23 Q. "Yeah."

24 A. "Before he was taken."

25 Q. "Yeah."

1 A. "Good idea, bro. Excellent next project."

2 MR. CHAKRAVARTY: Next page.

3 Q. "Yeah, cause I know a bro has already done Wa Yakoon, and
4 it will be in English, and he gave it to us but requires heavy
5 editing so if we do the Abu Anas, it's as if we did all three
6 videos with the exception of Riyah al Nasr, or Winds of
7 Victory."

8 A. "Okay. I think that one takes precedence because Wa
9 Yakoon, and it will be very similar to GUH."

10 Q. "Yeah."

11 A. "So can a bro transcribe it?"

12 Q. "Yeah. I will get someone to, inshaa-'Allaah, Allah
13 willing."

14 A. "Awesome."

15 Q. The reference to "GUH," are you aware of what that is?

16 A. Yes.

17 Q. What is that?

18 A. It's Ghazwah Umar Hadeed.

19 Q. What does "Ghazwah" mean essentially?

20 A. Taken over or attack or something like that.

21 Q. I draw your attention to Exhibit 512, please. Is this a
22 chat that occurred on March 8, 2006, between the defendant and,
23 again, Abu Mundhir at approximately 10:15?

24 A. Yes.

25 Q. Abu Mundhir says, "As Salam Alaykum, peace be upon you."

1 A. Are you reading from the top?

2 Q. I'm sorry. I'll focus in here.

3 "Do you have the Hollywood film Wa Yakoon Ad Deen and the
4 Religion Will Be?"

5 A. "Yes."

6 Q. "Ok."

7 A. "Starring the Slicer."

8 Q. "Can you just go through that and edit what needs to be
9 edited?"

10 A. "What do you mean?"

11 Q. "Press accept. You'll see."

12 A. "Accept what?"

13 Q. And then there's Abu Mundhir sending the defendant a file?

14 A. Correct.

15 Q. Is that file called Wa Yakoon.doc?

16 A. That's right.

17 Q. And then they continue to talk about the sending of the
18 video -- of the file, excuse me. "You're not getting it?"

19 A. "Nothing man."

20 Q. "Now? Okay, one sec. Now?"

21 MR. CHAKRAVARTY: Go to the next page, please.

22 Q. Abu Mundhir sends another link and then asks, "Did you get
23 it?"

24 A. "Yes."

25 Q. "K."

1 Now, Agent Khoury, have you seen a translation of a video
2 called Wa Yakoon?

3 A. Yes, I have.

4 MR. CHAKRAVARTY: I call up Exhibit 782. Again, this
5 should also be in, your Honor.

6 THE COURT: It's already in?

7 MR. CHAKRAVARTY: It should be, yes.

8 Q. Are you familiar with this document?

9 A. Yes.

10 Q. What does it appear to be?

11 A. It is a translation of the Wa Yakoon Ad Deen video.

12 THE COURT: I don't have it as in.

13 MR. CHAKRAVARTY: 782. Your Honor, this is one of
14 those items from the computer.

15 THE COURT: Is this from the first or second day?

16 MR. CHAKRAVARTY: Yes.

17 THE COURT: All right. I'll treat it as in. It's
18 being exhibited.

19 Q. Agent Khoury, can you just read that?

20 A. "Dear brother" --

21 MR. CARNEY: I object, your Honor.

22 THE COURT: To the question?

23 MR. CARNEY: To 782.

24 THE COURT: Let me see you at the side.

25 (SIDEBAR CONFERENCE AS FOLLOWS:

1 MR. CARNEY: Would it help if I showed it to you?

2 THE COURT: Yeah. Just so I'm clear, this is a
3 transcript of the oral narration that goes on the video; is
4 that what it is?

5 MR. CHAKRAVARTY: I think that's right. It's the
6 translation of the video. For the purposes of subtitles,
7 that's what that says.

8 MR. CARNEY: I object because this was simply a
9 document sent to the defendant. He didn't write it. He didn't
10 translate it. And it's laced with prejudicial comments such as
11 "take not the Jews and Christians for allies because they are
12 allies to each other" and other statements in here disparaging
13 people.

14 The fact that it was sent to the defendant, I submit,
15 should not make it admissible just because it was sent to him
16 and it's in his possession. I would ask the government to make
17 a proffer about why this is not cumulative of other evidence
18 that's been introduced, including evidence that we now object
19 to, and what the probative value is that's supplied by this
20 that's not supplied by other documents.

21 MR. CHAKRAVARTY: The person who sends the document to
22 the defendant is the same person who sends him GUH, who sends
23 him 39 Ways.

24 THE COURT: Who is he?

25 MR. CHAKRAVARTY: A guy named Abu Mundhir.

1 THE COURT: Is he on Tibyan?

2 MR. CHAKRAVARTY: He's on Tibyan. The fact that he's
3 sending him another project and they went through where they
4 should prioritize the projects, it's highly probative of
5 whether the defendant is part of the conspiracy, whether he
6 translated it or not, that it was part of his role. The fact
7 that it was from Iraq furthers as to why he's engaging in these
8 translation projects.

9 THE COURT: The objection is overruled.

10 . . . END OF SIDEBAR CONFERENCE.)

11 Q. Agent Khoury, can you just read that, the zoomed-in
12 portion?

13 A. "Dear brother, I have translated the full video of Wa
14 Yakoon Ad Deen Kulouhu Lil'ah. Some sentences will not be
15 grammatically correct. This is due to the fact that the
16 translation is the translation of speech and not text and so
17 the grammatical errors will be negligible when the translation
18 is turned into subtitles."

19 Q. Can you read the part that I enlarged there?

20 A. "The Organization of al Qa'ida in the Land of Iraq, The
21 Media Front Presents."

22 MR. CHAKRAVARTY: Can we go to the last page, Page 10,
23 I believe.

24 Q. Can you read that?

25 A. "Do not forget us from the finest of your Du'ah. Your

1 Brothers in the Media Branch. The Organization of al Qa'ida in
2 the Land of Iraq."

3 MR. CHAKRAVARTY: Call up Exhibit 41. Can we play the
4 first five minutes, please.

5 (Video played.)

6 Q. Agent Khoury, is this -- that's about the first five
7 minutes. Does it match up roughly with the translation that
8 you were reading from before?

9 A. Yes.

10 Q. Now, there's a symbol in the upper right-hand corner, up
11 here. Do you recognize that?

12 A. This is a media department for the al Qa'ida in the Land
13 of Two Rivers, which is Iraq.

14 MR. CHAKRAVARTY: Call up Exhibit 92.

15 Q. Does that appear to be the same symbol?

16 A. Yes.

17 MR. CHAKRAVARTY: Call up Exhibit 153.

18 Q. Are you aware of what that symbol is?

19 MR. CARNEY: I object, your Honor.

20 THE COURT: Let me see you.

21 (SIDEBAR CONFERENCE AS FOLLOWS:

22 MR. CARNEY: Your Honor, I object to this question,
23 and I move to strike the previous question and answer. There's
24 no way that a layperson would recognize that as a symbol of al
25 Qa'ida media wing. In fact, according to our expert, that

1 would be a false statement and so this is not --

2 MR. CHAKRAVARTY: He was personally there. He's
3 familiar with the symbol. He's giving you his assessment of
4 what that symbol means.

5 MR. CARNEY: That's coming in as an expert's testimony
6 because there's no other person on this side of the bar who
7 would recognize that as a symbol of al Qa'ida media wing.

8 MS. BASSIL: Your Honor.

9 MR. CARNEY: It's expert testimony.

10 THE COURT: I'm not sure it is. It's recognizing
11 something you're familiar with from your travels.

12 MS. BASSIL: If I may, your Honor.

13 THE COURT: I mean, for example, recognize the Chechen
14 flag. I wouldn't recognize the Chechen flag, but somebody
15 who's been there might.

16 MR. CARNEY: Yes, but this is specifically, according
17 to the witness, a symbol of al Qa'ida media.

18 MS. BASSIL: Which is wrong.

19 MR. CARNEY: It's wrong. It's not a symbol of al
20 Qa'ida media. It may be a symbol of al Qa'ida but not of al
21 Qa'ida media. The reason he gets it wrong is because he
22 doesn't have expertise in this area. And he should not be
23 allowed to be testifying to this.

24 MS. BASSIL: Your Honor, I also want to add one more
25 thing he got wrong. He listed the GUH, which is the Umar

1 Hadeed video. He described it as being called the Attack of
2 Umar Hadeed, which it has never been called that. Every
3 witness, every expert, has said it's referred to as the
4 Expedition of Umar Hadeed. He's gotten some other Arabic words
5 wrong as well.

6 THE COURT: I don't think it's necessarily expert, but
7 perhaps you should lay some foundation for a lay testimony.
8 The fact that he's wrong --

9 MS. BASSIL: The government is well aware that that's
10 the al Qa'ida logo, and there's no separate logo for an al
11 Qa'ida media wing, and they're just putting things in that are
12 simply not true.

13 THE COURT: You can have it perhaps after more
14 foundation.

15 . . . END OF SIDEBAR CONFERENCE.)

16 Q. Agent Khoury, what was the time frame that you were in
17 Iraq again?

18 A. It was April 2003 to August of 2003.

19 Q. The American forces had invaded Iraq by that time, is that
20 right?

21 A. Correct.

22 Q. And has the -- have the events of Iraq influenced -- and
23 don't go into detail on how, but have they influenced your
24 activities as a counterterrorism agent over the last several
25 years?

1 A. Of course.

2 Q. Are you familiar with the symbols used by al Qa'ida?

3 A. Yes, I am.

4 Q. Okay. Is that part of your professional -- kind of the
5 scope of your employment as well as your personal experiences
6 through your travels?

7 A. Yes. I mean, you have to. If you're going to be working
8 on certain groups, you need to know what some of their logos
9 are.

10 Q. So the exhibit in 153, are you familiar with that logo?

11 A. This logo that is on the screen right now?

12 Q. That's on the screen right now.

13 A. I have seen it in the clips that we were watching.

14 Q. That includes some of the videos that we've been watching?

15 A. Correct.

16 Q. What is that logo of?

17 MR. CARNEY: May I inquire on voir dire?

18 THE COURT: No. You may make an objection.

19 MR. CARNEY: Objection.

20 THE COURT: Sustained.

21 Q. Where have you seen this logo before?

22 A. On some of the videos that we have watched and some of the
23 media that is out there about al Qa'ida and Iraq.

24 Q. So not -- aside from the videos that you watched for
25 purposes of this case, have you seen it before?

1 A. No.

2 Q. Okay. Then that will answer my question.

3 A. We're talking about this one on the screen?

4 Q. On the screen right now.

5 A. No.

6 MR. CARNEY: May I renew my motion to strike, your
7 Honor?

8 THE COURT: With reference to the previous --

9 MR. CARNEY: Yes, your Honor.

10 THE COURT: I think we should revisit it, yes. I'll
11 strike it, but you may try again.

12 MR. CHAKRAVARTY: Can we call up Exhibit 92, please.

13 Q. This is the earlier image that I showed you. We're trying
14 to establish how you know what these symbols are. What is your
15 basis of knowledge of knowing what this symbol is?

16 A. I know this one is -- it represents al Qaeda in the Land
17 of the Two Rivers, and I have seen this one on the videos and
18 outside of the videos.

19 Q. Where outside of the videos?

20 A. During some of the investigations and some of the papers
21 that came out of Iraq, some of these were -- some of the logos
22 were on it.

23 Q. In fact, it was on the very videos that we just watched?

24 A. Correct.

25 Q. With that, I would again ask you the question: What is

1 this a symbol of?

2 MR. CARNEY: I object.

3 THE COURT: Overruled.

4 A. It's a symbol of the media department of al Qa'ida in the
5 Land of the Two Rivers, which is Iraq.

6 Q. And that's based on your experience, as you just
7 described?

8 A. Correct.

9 MR. CARNEY: May I voir dire the witness?

10 THE COURT: No. I think it will come on
11 cross-examination.

12 Q. Were you also asked, Agent Khoury, to watch a video called
13 Abu Nasir al-Qahtani?

14 A. Yes.

15 THE COURT: Let me just back up for a minute because
16 of the back and forth. That was 92, the last one?

17 MR. CHAKRAVARTY: Yes.

18 THE COURT: I think the state of events was it was
19 admitted, then there was an objection and a move to strike it.
20 I don't think it's been shown to the jury. Since the objection
21 is overruled and it is admitted --

22 (Exhibit No. 92 received into evidence.)

23 MR. CHAKRAVARTY: Thank you, your Honor. Just to
24 clarify, it wasn't clear to me whether the exhibit was being
25 stricken or the testimony about the defendant's description of

1 what it symbolized.

2 THE COURT: Whatever was stricken just laid -- opened
3 the last series of questions, which now stands. 92 is in
4 evidence and is being displayed to the jury now. Now, if you
5 want to move on --

6 Q. Did you watch a film called Abu Nasir al-Qahtani?

7 A. Yes, I did.

8 Q. Was this, like the previous video clip, something that was
9 found on the defendant's computer?

10 A. I saw it on a CD that was provided to me.

11 Q. Was that CD Item No. 1B72, a -- would it help if I showed
12 you this?

13 A. Please.

14 MR. CHAKRAVARTY: May I approach, your Honor?

15 THE COURT: You may.

16 Q. Do you recognize that?

17 A. Yup.

18 Q. Is that the CD containing the materials that were found on
19 the defendant's computer?

20 A. Yes.

21 Q. And, particularly, you watched Abu Nasir al-Qahtani, is
22 that correct?

23 A. Correct.

24 Q. I'll first, again, draw your attention to a few of the
25 stored chat communications.

1 MR. CHAKRAVARTY: Can we call up Exhibit 695.

2 Q. This is a chat that occurred on May 4, 2006, between the
3 defendant and a person named Mu'awiyah?

4 A. Correct.

5 Q. If you could read the defendant's words?

6 A. "Alaykum as-Salam. Check this out." And there's a link
7 that was sent.

8 Q. "What is it about?"

9 A. "Abu Nasir al-Qahtani, Bagram escapee, leaving his first
10 post escape attack on uluj infidels."

11 Q. "Unfortunately my sound system is in sham. It is breaking
12 up."

13 A. "It's okay. There are subtitles. Go to 10:35 and see
14 what he says. It's awesome."

15 Q. "How is everything else, dear brother? How are the
16 brothers? Do you know dear brother an American" --

17 MR. CARNEY: I object, your Honor.

18 THE COURT: All right. I'll see you.

19 (SIDEBAR CONFERENCE AS FOLLOWS:

20 MR. CARNEY: This is where he stopped, and I object to
21 the balance.

22 THE COURT: It's also -- where am I? "The pirate ship
23 of aal salool"?

24 MR. CHAKRAVARTY: I'm not sure.

25 THE COURT: What's the objection?

1 MR. CARNEY: The probative value of this is minimal to
2 just go over again that he's glorifying in the death of an
3 American soldier killed in Iraq. After all that we've had so
4 far, I respectfully suggest there is no further probative value
5 to videos or chats that make the same point over and over and
6 over, that he's in favor of soldiers being killed in Iraq. I
7 object on that basis.

8 MR. CHAKRAVARTY: I don't think anything has changed,
9 your Honor. This is a different video. You just watched it.
10 It shows that the defendant is the one who's actually
11 encouraging that this be done to American soldiers, which is an
12 important part of the case. We should be able to present
13 different types of evidence to show it.

14 THE COURT: You can have it.

15 MR. CARNEY: I move for a mistrial.

16 THE COURT: Okay. Denied.

17 . . . END OF SIDEBAR CONFERENCE.)

18 Q. Mu'awiyah asks, "How are the brothers? Do you know dear
19 brother an American soldier does not need visa for entry to the
20 pirate ship of aal salool." What does the defendant say?

21 A. "Hey, yeah. He gets red carpet. Text."

22 MR. CHAKRAVARTY: Can we call up Exhibit 731, Page 11,
23 please. I'm sorry. Go back to Page 1 to situate the --

24 Q. Is this a chat on May 9, 2006, between the defendant and
25 Tauqir?

1 A. Correct.

2 MR. CHAKRAVARTY: Go back to Page 11.

3 MR. CARNEY: Mr. Chakravarty, can you just tell me the
4 number in the bottom right, please.

5 MR. CHAKRAVARTY: 2650.

6 MR. CARNEY: I'm sorry. I'm referring to Page 11.

7 MR. CHAKRAVARTY: Page 11. The page number of the
8 document is 141, SFT02650.

9 MR. CARNEY: Right. That's Page 1. Are you going to
10 Page 11?

11 MR. CHAKRAVARTY: Yes, 2660, so Page 11, yeah.

12 MR. CARNEY: Thank you.

13 Q. Again, if you'll read what the defendant said, and I'll
14 say what Tauqir said.

15 A. "Dude, check this out." And then he sends a link. "Open
16 this link and go to the time slot 10:30 in the video."

17 Q. "It's called GM, right, al shaba, or al shaba media?"

18 A. "Yeah. Go to 10:30."

19 Q. "Yeah, I'm watching. They speak Arabic, not Pashto?"

20 A. "This bro is from Saudi."

21 Q. "Oh, okay."

22 A. "He was arrested by the Americans in jail. Then he
23 escaped. This is his first video after escaping."

24 Q. "Where is he educated from? Seems very smart."

25 A. "No clue. But did you see what he said about the pigs?"

1 Q. "What did he say?"

2 A. "Go to 10:30 and see, hehe."

3 Q. "I'm trying to understand him without the subtitles. Ohh,
4 I'm at 5."

5 A. "You see it?"

6 Q. "Hahaha, ameen, amen."

7 A. "That's a real Muslim."

8 Q. "You see his eyes, brother?"

9 A. "Yeah. He means what he says," smiley face.

10 Q. Now, at one point Tauqir asks, "They speak Arabic, not
11 Pashto?" Are you familiar with what Pashto is?

12 A. It's a language. It's spoken in Pakistan and Afghanistan.

13 MR. CHAKRAVARTY: With that, I'd call up Exhibit 33,
14 and we'll play the first clip.

15 (Video played.)

16 Q. Agent Khoury, that was the first portion of that film, is
17 that right?

18 A. Correct.

19 Q. And then after that first portion, in a part that we're
20 not showing to the jury, what does the video depict?

21 A. It shows the brutal beheading of --

22 MR. CARNEY: I object, your Honor.

23 A. -- of two individuals by al Qa'ida members in Iraq.

24 THE COURT: Overruled.

25 MR. CHAKRAVARTY: I think the objection may have

1 occurred over --

2 MR. CARNEY: May the witness be instructed, if I stand
3 and say, "I object," he should stop speaking?

4 THE COURT: Yes, all right.

5 Q. Agent Khoury.

6 THE WITNESS: I apologize.

7 THE COURT: The objection is overruled.

8 MR. CARNEY: Accepted.

9 THE COURT: He can have the question.

10 Q. Can you just state -- because I think that what you were
11 saying was -- because you kept talking over the objection, the
12 jury may not have heard. What was depicted after the beginning
13 of that video?

14 A. It was the brutal beheading of two individuals by members
15 of al Qa'ida in Iraq.

16 Q. And then did the video continue to do other scenes?

17 A. Correct.

18 MR. CHAKRAVARTY: I'm going to ask to play video clip

19 B.

20 THE COURT: Can you identify, for the record, where it
21 begins?

22 MR. CHAKRAVARTY: Sure, exactly. I was just going to
23 say that.

24 Q. Does the video clip B begin at approximately the
25 four-minute mark and go to the five minutes, thirty seconds?

1 A. Are you asking me about where the beheading video is?

2 Q. No. I'm asking you about the second clip as opposed to
3 where the beheading videos are. After the beheading videos --

4 A. Then it's this clip.

5 Q. This is the second clip?

6 A. Correct.

7 Q. Is that at about the four minutes to five minutes, thirty
8 seconds?

9 A. I don't really recall exact -- the exact time of that
10 clip.

11 THE COURT: Well, Mr. Chakravarty, we'll accept your
12 representation. I just want the record to reflect about where
13 it is.

14 MR. CHAKRAVARTY: Sure. Four minutes to five minutes,
15 thirty, your Honor.

16 Q. And then the last clip will be from the ten minutes to
17 eleven minutes, is that right?

18 A. Right.

19 Q. In fact, you watched the entire video, is that right?

20 A. I have.

21 Q. This portion is in Arabic, is that right?

22 A. Correct.

23 Q. So I'm not going to ask you to translate what he said, but
24 I'll ask if the video clip is an accurate rendition of the
25 video that you saw.

1 MR. CHAKRAVARTY: Go ahead. Play.

2 (Video played.)

3 Q. Agent Khoury, after that -- that clip, by the way, being
4 from four minutes to five minutes, thirty seconds includes the
5 time stamp around five minutes, is that right?

6 A. That's right.

7 Q. So now we'll go to the last clip. And this includes the
8 ten minutes, thirty seconds time stamp that you just read in
9 some of the other chats, is that right?

10 A. That's correct.

11 MR. CHAKRAVARTY: Can we play this.

12 (Video played.)

13 MR. CHAKRAVARTY: One moment, your Honor.

14 Those are all the questions I have for the witness,
15 your Honor.

16 THE COURT: It's just before one. I'll give you the
17 option. Do you want to start now or do you want to reserve?

18 MR. CARNEY: Reserve, please.

19 THE COURT: Okay. Rather than begin and stop
20 immediately with cross-examination, we'll take that up
21 tomorrow. So, jurors, thank you for your attention. Enjoy the
22 rest of the day. We'll see you tomorrow at 9.

23 (The jury was excused.)

24 (SIDEBAR CONFERENCE AS FOLLOWS:

25 MR. AUERHAHN: It's actually sort of a procedural

1 issue. This is the first time I'm trying in front of you, so I
2 don't know your practice. It's been my experience in front of
3 a lot of judges that once a witness is done with the
4 cross-examination we are allowed to prep him before redirect.
5 I didn't know your practice, so I didn't do it with Aboubakr.
6 I've learned that judges have different practices.

7 THE COURT: I think, while he is a continuing witness,
8 you should not be speaking with him.

9 MR. AUERHAHN: Even after cross is finished?

10 THE COURT: Right.

11 MR. AUERHAHN: Then I'm glad I didn't.

12 MS. BASSIL: As long as we're here, we apparently have
13 witnesses from the U.K. tomorrow. And other than knowing
14 there's exhibits and there's a list of a lot more, we have no
15 idea what each one is going to be talking about. We have not a
16 clue.

17 THE COURT: Are they chain-of-custody people?

18 MR. AUERHAHN: One is a forensic computer individual
19 who analyzed the computers seized and pulled the exhibits that
20 we've produced. And we've produced the report. The other two
21 were involved in investigations in both the seizure of evidence
22 and some of the analysis of the evidence.

23 We provided -- two of them testified in Atlanta
24 trials. We provided the transcripts of their testimony. We
25 provided -- some of the search documents that they gave us, we

1 provided to the defense.

2 THE COURT: In the Atlanta trials, was their testimony
3 substantially similar to what you expect it will be here?

4 MR. AUERHAHN: Yeah, substantially similar. But one
5 of the differences is the -- like, in this trial so far, there
6 have been no stipulations to chain of custody and things like
7 that. In Atlanta, there was some testimony, not from firsthand
8 knowledge, because there weren't any objections to that kind of
9 evidence.

10 So in terms of exactly who's going to go first, who's
11 going to go second, how that's going to be divided, it may be
12 different than Atlanta but cover the same ground.

13 THE COURT: What I was getting at was, the Atlanta
14 defendants -- the purpose in the Atlanta cases was to show the
15 Atlanta defendants were connected somehow with the UK people
16 and the hard drives.

17 MS. BASSIL: He was also pro se. A lot of stuff came
18 rolling in that shouldn't have.

19 MR. AUERHAHN: We did identify the specific exhibits
20 which --

21 THE COURT: No, but in terms of the scope of the
22 recorded testimony, it's going to be somewhat similar to what
23 we offered here.

24 MS. BASSIL: I don't believe those reports are signed
25 by anybody. In other words, I don't know who was responsible

1 for what report.

2 THE COURT: Are you talking about the attachments that
3 were to the government's response?

4 MS. BASSIL: Yes.

5 THE COURT: I think there were authors identified, but
6 I'm not sure.

7 MS. BASSIL: One had it on the front, but the others
8 didn't.

9 MR. AUERHAHN: We gave the reports. We gave the --

10 MS. BASSIL: Can I know who wrote what report?

11 MR. AUERHAHN: As I said, one of the witnesses will be
12 the forensic computer individual who did the analysis as well
13 as was present at one of the searches, and one of the witnesses
14 was present in one of the searches and pulled some of the --
15 also discussed some of the analysis.

16 THE COURT: And the forensic person who will be here,
17 his name?

18 MR. AUERHAHN: Graeme Burridge.

19 MS. BASSIL: Did he write any of the reports?

20 MR. AUERHAHN: We turned over --

21 MS. BASSIL: Why can't I get an answer whether he
22 wrote the report or not? We're entitled to know.

23 MR. AUERHAHN: We turned over the reports of the
24 witnesses. Part of the problem I think we've been having with
25 this case is the defense thinks we have to summarize all the

1 witnesses' testimony in advance of their testifying. We have
2 an obligation to provide discovery. We identify in advance
3 what exhibits we're going to use, and we give a general
4 information about the subject matter of the testimony. But I
5 don't know that we're required to give a summary of everyone's
6 testimony in advance of them taking the stand.

7 THE COURT: Unless they are experts.

8 MS. BASSIL: And they are treating them as experts.
9 If somebody has a statement, I'm entitled to know which
10 statement goes with which witness. I have never heard of
11 anything like that.

12 THE COURT: If there are statements, they would be
13 Jencks material.

14 MS. BASSIL: That's right. So I want them identified.

15 THE COURT: Technically, you don't have to do it till
16 the end of direct --

17 MS. BASSIL: I just want to know who wrote it. Is
18 this so hard?

19 THE COURT: I think it has to be identified to the
20 witness if it's either expert or Jencks.

21 MR. AUERHAHN: Everything we've gotten from the Brits
22 we turned over.

23 THE COURT: Have you identified the witness?

24 MS. BASSIL: Thank you.

25 . . . END OF SIDEBAR CONFERENCE.)

1 MR. CARNEY: May I see your Honor about an ex parte
2 matter?

3 THE COURT: Is it the pending motion?

4 MR. CARNEY: Yes, your Honor.

5 THE COURT: You'll have an order this afternoon.

6 MR. CARNEY: All right, your Honor. Thank you.

7 (Whereupon, at 12:59 p.m. the trial recessed.)
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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 09-10017-GAO-1, United States of America v. Tarek Mehanna.

/s/ Marcia G. Patrisso.
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

Date: November 7, 2011